

From: (b) (6), (b) (7)(C)
To: (b) (6), (b) (7)(C)
Subject: Internal Job Description
Date: Friday, January 24, 2020 9:55:47 AM

(b) (6), (b) (7)(C)

Here is the internal job description for Resident Director.

The Resident Director performs a dual role, serving as both a Financial Advisor and a Leader. The ideal candidate should be a successful producer with leadership qualities based on personal relationships and a passion for developing and coaching Financial Advisors and Client Associates. He or she should be motivated to grow the office by leading our firm strategy through Client Engagement, Optimal Practice Model, and Goals Based Wealth Management. The Series 9/10 are not a perquisite but must be achieved within 90 days of being place in the role.

(b) (6), (b) (7)(C)

Thanks,

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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January 27, 2020

Jonathan C. Fritts, Attorney
Morgan Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

Re: Bank of America Merrill Lynch
Case 28-CA-254290 and 28-CA-255012

Dear Mr. Fritts:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **February 7, 2020** with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

28-CA-255012-The Charging Party has presented evidence that the Employer has violated Section 8(a)(1) of the Act by interfering with, restraining and coercing employees in the exercise of Section 7 rights by requiring that employees provide to the Employer their personal text messages, emails, and other documents which discuss terms and conditions of employment and other protected concerted activities. Specifically, in about August 2019 and September 2019, the Employer, through (b) (6), (b) (7)(C) told the Charging Party to provide copies of all text messages between (b) (6), (b) (7)(C) and other employees. (b) (6), (b) (7)(C) also demanded that the Charging Party provide to the Employer copies of personal emails between (b) (6), (b) (7)(C) and other employees, as well as any other document the Charging Party shared with other employees.

28-CA-254290-The Charging Party has presented evidence that the Employer has violated Section 8(a)(1) of the Act by discharging the Charging Party on about September 18, 2019 because (b) (6), (b) (7)(C) engaged in protected concerted activities. Specifically, the Charging Party has presented evidence that the Employer determined to terminate (b) (6), (b) (7)(C) after it learned that the Charging Party had exchanged messages and spoken to other employees regarding terms and conditions of employment, including the Employer's investigation into employee's making calls to numbers on a "do not call" list. The Employer determined to terminate the Charging Party only after it had learned of the Charging Party's communications with other employees.

Board Affidavits: I am requesting to take affidavits from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and any other individuals you

believe have information relevant to the investigation of the above-captioned matter. **Please confirm the names and job titles of the above individuals in your statement of position.** Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by **February 3, 2020** to schedule these affidavits.

Also, please include the Employer's position as to whether (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) are supervisors within the meaning of Section 2(11) or Agents within the meaning of Section 2(13) of the Act. **For each individual that you admit to be a supervisor or agent within the meaning of Section 2(11) or 2(13) of the Act, it is not necessary to provide the documents requested in paragraphs 2 and 3 below.** In your stipulation, please include the dates for which each of the above individuals were supervisors within the meaning of Section 2(11) or Agents within the meaning of Section 2(13) of the Act.

Documents: Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. Completed Questionnaire on Commerce that was included in the letter notifying you of the filing of this charge.¹
2. Job descriptions for (b) (6) (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)
3. Documents reflecting the participation of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) in any of the following actions concerning employees of the Employer, including but not limited to, recommendations that the Employer take the following actions:
 - a. Hiring,
 - b. Transferring,
 - c. Suspending or disciplining,
 - d. Laying off,
 - e. Recalling,

¹ If the Employer is willing to stipulate to the Board's jurisdiction then it may be unnecessary to complete the Questionnaire on Commerce. Please contact me prior to filing your Position Statement to arrange for an appropriate stipulation.

- f. Promoting,
 - g. Discharging,
 - h. Assigning work,
 - i. Rewarding,
 - j. Scheduling or granting time off,
 - k. Assigning overtime.
4. A copy of (b) (6), (b) (7)(C) employment contract including any addendums, attachments, or modifications thereto.
 5. Documents describing the job responsibilities or duties assigned to (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) or any other position (b) (6) held.
 6. Copies of all documents which mention discuss, or describe a meeting on July 19, 2019 between (b) (6), (b) (7)(C) and an employee(s) regarding lead sourcing, including any subsequent requests for documents by the Employer.
 7. Copies of a July 23, 2019 email from (b) (6), (b) (7)(C) to an employee requesting documents located on the employee's personal computer.
 8. Copies of all documents which mention discuss, or describe a meeting on August 23, 2019 between (b) (6), (b) (7)(C) and an employee(s) regarding lead sourcing, including any subsequent requests for personal text messages and/or emails by the Employer.
 9. Copies of an August 27, 2019 email chain between (b) (6), (b) (7)(C) and the Charging Party requesting personal documents and information.
 10. Copies of a September 5, 2019 letter from (b) (6), (b) (7)(C) requesting that the Charging Party explain certain communications (b) (6) had with other employees regarding terms and conditions of employment.
 11. Documents reflecting the Employer's reasons for requiring that an employee provide to the Employer copies of personal text messages, emails, and/or other documents or communications between the Charging Party and other employees.
 12. Documents reflecting any deliberations, discussions, or consideration of the Charging Party's personal text messages, emails, and/or other documents or communications by the Employer in determining to discipline the Charging Party.

13. Documents reflecting the Employer's reasons for discharging (b) (6), (b) (7)(C) on about (b) (6), (b) (7)(C) 2019.
14. Copies of any termination letters regarding (b) (6), (b) (7)(C) discharge.
15. Copies of the U-5 form submitted by the Employer to FINRA regarding the Charging Party.
16. Documents reflecting the Employer's contacts with reporters from MarektExcutive.com and/or AdvisorHub.com regarding the Charging Party's termination, including all information provided by the Employer for the news article (i.e. copies of termination documents or statements regarding the Charging Party's termination).
17. Documents reflecting incidents where the Employer has discharged or disciplined other employees for the same or similar reasons that it discharged (b) (6), (b) (7)(C).
18. To the extent the Employer contends that (b) (6), (b) (7)(C) was discharged for conduct or performance related reasons, documents reflecting (b) (6), (b) (7)(C) conduct or performance that were considered by the Employer.
19. Documents reflecting (b) (6), (b) (7)(C) disciplinary and/or performance history while employed by the Employer.
20. Any other documents you believe are relevant to the investigation.

Position Statement:

Your position statement should set forth the facts concerning this matter and should address the Employer's statement of facts and legal position as to whether its actions violated Section 8 (a)(1) of the Act as alleged. Specifically, explain the rationale for the Employer's decision to discharge employee (b) (6), (b) (7)(C) on about (b) (6), (b) (7)(C) 2019. Furthermore, address the extent and knowledge that the Employer had of (b) (6), (b) (7)(C) protected concerted activities and the extent to which it formed the basis for the Employer's decision to harass, intimidate, or threaten (b) (6), (b) (7)(C) and/or discriminate against (b) (6), (b) (7)(C) in regards to (b) (6), (b) (7)(C) terms and conditions of employment. Your position statement should discuss the Employer's knowledge of the personal communications between the Charging Party and other employees, as well as the reasons for requiring that an employee divulge personal messages to the Employer. Your position statement should also address how Employer representatives knew about or received copies of the Charging Party's personal communications. Your position statement should discuss whether and to what extent the Employer considered the Charging Party's personal communications when determining to discipline or discharge the Charging Party.

To the extent that the Employer contends (b) (6), (b) (7)(C) was discharged for conduct or performance related reasons, please include evidence of instances where other employees were issued discipline or discharged for the same or similar conduct since about January 1, 2018. The Employer should also address other employees that were similarly treated since about January 1, 2018, as well as the Employer's reasons for selecting those employees. Please also describe any investigation that was undertaken by the Employer prior to selecting (b) (6), (b) (7)(C) for discharge, and the outcome of that investigation. Your position statement should include citations to relevant Board law in support of your position.

Additionally, please address the Employer's policies with regard to employees raising concerns regarding the Employer's investigation of the do not call list, or any other terms and conditions of employment, including how those policies were communicated to employees. Moreover, explain any past practices regarding employee's raising concerns about Employer investigations or other workplace issues, and any restrictions placed on employees' discussing internal investigations, or any other terms and conditions of employment. Your position statement should address whether and to what extent the Employer has required employees to reveal protected concerted activity to management individually and has told employees not to discuss or raise concerns with other employees. I would ask that your position statement particularly address the August 27, 2019 and September 5, 2019 email exchange between (b) (6), (b) (7)(C) and an employee(s).

Finally, please confirm that the factual representations in the allegations paragraph are correct and, if not, clarify with specificity. If the factual representations are not disputed and the Employer defends its action on grounds that it is authorized to take these actions based on reserved management rights, please provide the basis for such actions, and past practices, if any. Your position statement should cite appropriate legal authority and you should provide documents substantiating any assertions.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by **February 7, 2020** If you are willing to allow me to take affidavits, please contact me by **January 31, 2020** to schedule a time to take affidavits. Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted.

Please contact me at your earliest convenience by telephone, (602)416-4756, or e-mail, nicholas.gordon@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Nicholas Gordon
Field Attorney

Memorandum

To: Alan Baskin

From: (b) (6), (b) (7)(C)

Date: August 14, 2019

Re: (b) (6), (b) (7)(C) Interview with (b) (6), (b) (7)(C) on Behalf of Merrill

Attendance: (b) (6), (b) (7)(C), Alan Baskin, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Introduction:

(b) (6), (b) (7)(C) opened by clarifying they represent Merrill Lynch and Bank of America and the purpose of the interview/meeting is to ask follow up questions about the letter that was provided by Alan and (b) (6), (b) (7)(C) questions about produced texts and emails, and ask additional follow up questions about the previous discussion they had with (b) (6), (b) (7)(C)

General Questioning Summary:

The questioning first focused on the branch report, the DNC calls that were made and on (b) (6), (b) (7)(C) recollection and involvement based on the information (b) (6) provided in (b) (6), (b) (7)(C) recently submitted letter. (b) (6), (b) (7)(C) reemphasized that (b) (6) was never running (b) (6), (b) (7)(C) own cold calling campaign and was focused on seminars (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) noted that calls that (b) (6), (b) (7)(C) made were to demonstrate for others how to cold call, to strategize and for comradery. (b) (6), (b) (7)(C) was trying to help both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) because they needed business leads and were interested in cold calling based on the methodology presented to them. When asked about how (b) (6) can determine if someone is on DNC and about salesforce, (b) (6), (b) (7)(C) explained the process of developing lead lists. (b) (6), (b) (7)(C) noted the small icons that are used to mark who is on the DNC and how there is also a way to make it a field but further noted the dysfunctionality of salesforce if one does not receive proper training or does not do it correctly. (b) (6), (b) (7)(C) also questioned what (b) (6), (b) (7)(C) had told (b) (6), (b) (7)(C) to do and whether (b) (6), (b) (7)(C) knew to scrub the lists. (b) (6), (b) (7)(C) reiterated throughout the meeting that (b) (6) had told (b) (6), (b) (7)(C) to scrub the list and put it into salesforce and that they knew that they were supposed to do that and were trained to scrub lead lists. When asked whose responsibility it is to scrub a list, (b) (6), (b) (7)(C) stated that the person running the campaign needs to scrub the list.

(b) (6), (b) (7)(C) then questioned (b) (6), (b) (7)(C) further about (b) (6), (b) (7)(C) involvement with the CareerBuilder calling campaign and CareerBuilder account based on emails (b) (6), (b) (7)(C) had with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) reiterated they were not (b) (6), (b) (7)(C) campaign and that while (b) (6), (b) (7)(C) had a deal with (b) (6), (b) (7)(C) that if leads came from the calling campaigns, (b) (6), (b) (7)(C) might get part of the business because (b) (6), (b) (7)(C) was paying for part of the cost for CareerBuilder, (b) (6), (b) (7)(C) was never actively running a calling campaign, (b) (6), (b) (7)(C) was just trying to help.

After, this general line of questioning (b) (6), (b) (7)(C) moved on to discuss text message exchanges that (b) (6), (b) (7)(C) had produced. (b) (6), (b) (7)(C) specifically asked about texts on the following dates: 3/24, 5/13, 5/30, 6/4, 6/8, 6/21, 6/30, 8/16, 8/29, 9/19, 10/5, 11/2, 11/16, 1/18, 2/5, and 3/27. This line of questioning focused on questions to clarify (b) (6), (b) (7)(C) intent and why (b) (6), (b) (7)(C) would be texting (b) (6), (b) (7)(C) certain messages if (b) (6), (b) (7)(C) was not actively a part of (b) (6), (b) (7)(C) cold calling campaign. (b) (6), (b) (7)(C) noted that (b) (6), (b) (7)(C) texts about cold calling only referred to dials (b) (6), (b) (7)(C) made to help (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) script and to support (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) campaign. (b) (6), (b) (7)(C) specifically asked (b) (6), (b) (7)(C) about a lead list that (b) (6), (b) (7)(C) had mentioned working on in a text. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) may have been working on a list at one time but that (b) (6), (b) (7)(C) only looked at CareerBuilder and how you could find certain occupations to come up with a strategy and had never finished a list or called anyone from (b) (6), (b) (7)(C) own list.

The questioning ended with an opportunity for (b) (6), (b) (7)(C) to address some comments that (b) (6), (b) (7)(C) was accused of making previously to other employees that were considered inappropriate. Including comments about not calling women, focusing on white men's names and a white woman is a black man's prize. (b) (6), (b) (7)(C) denied making these comments and explained any previous confusion and the context.

Conclusion:

The meeting ended at 2:08 p.m. and lasted approximately five hours with four short breaks throughout. Based on the questioning in the meeting, (b) (6), (b) (7)(C) agreed to review (b) (6), (b) (7)(C) text messages with (b) (6), (b) (7)(C) and produce them for review, as well as produce emails (b) (6), (b) (7)(C) has with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) email. (b) (6), (b) (7)(C) noted they would be in touch but had no other updates currently.

General Questioning * Paraphrased (Below are my paraphrased notes of the conversation and my personal work product. It should not be confused as an actual transcript of the meeting):**

(b) (6), (b) (7)(C) You stated in letter you have no client relations from cold calls and that you have not made cold calls in a good period-of-time. Is that true? You don't need to make cold calls?

(b) (6), (b) (7)(C) May need to make cold calls for business referrals. For example, may help business practice consultant meet a dentist or other professional etc. BUT have not sourced a client through cold calling, but not to say that (b) (6), (b) (7)(C) has never ever done it. (b) (6), (b) (7)(C) has not seen it work as a strategy recently.

(b) (6), (b) (7)(C) Have you seen anyone use cold calling and it work?

(b) (6), (b) (7)(C) I have seen (b) (6), (b) (7)(C) and coworkers cold call

(b) (6), (b) (7)(C) But have you received a client relation in the last two years form cold calling?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) Have you seen success with cold calling by trainees?

(b) (6), (b) (7)(C) Not seen but heard maybe

(b) (6), (b) (7)(C) What do you mean?

(b) (6), (b) (7)(C) So I have seen that if you call 1,000 people you may get one client as compared to seminars where for example I spent 2 ½ hours of work and received 21/2 million prospects.

Maybe it used to be effective because people could open accounts for lower but now 250 k which is harder to get on cold call. But cold calling can still be campaign.

(b) (6), (b) (7)(C) So you previously said that you have made no cold calls to potential client for a year and a half. Is that correct?

(b) (6), (b) (7)(C) I don't recall reaching out besides to net jobs maybe and made follow up calls. (b) (6), (b) (7)(C) may have made calls on (b) (6), (b) (7)(C) own in 2018 but (b) (6), (b) (7)(C) had no active campaign going on with cold calls.

(b) (6), (b) (7)(C) Where did the numbers you used in 2018 come from?

(b) (6), (b) (7)(C) from coworker (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) assumed that the list was scrubbed and a clean list because (b) (6), (b) (7)(C) knew to do that and I told (b) (6), (b) (7)(C) multiple times.

(b) (6), (b) (7)(C) What list was it

(b) (6), (b) (7)(C) Assume it is the career builder list but may have been Petsmart. May have made Petsmart calls at that time. We had bought a list from (b) (6), (b) (7)(C) (SP?) in the Spring of 2018 for Petsmart campaign.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) scrub the list?

(b) (6), (b) (7)(C) I shared numbers with (b) (6), (b) (7)(C) (Sp?) and told (b) (6), (b) (7)(C) to scrub and put in salesforce. Because that is where it needs to go into Salesforce.

(b) (6), (b) (7)(C) How do you put into sales force?

(b) (6), (b) (7)(C) Multiple ways. You get email with list and it is uploaded/ scrubbed and then you access the scrub numbers when you generate a report and view the report. You can generate report with the tool. But that is the issue because the DNC is marked only by a small icon and can be confusing and unclear really need to do it in a field. But there is no predefined report in salesforce.

(b) (6), (b) (7)(C) Confused. The point of salesforce is to find existing clients and identify DNC so.... You get the list back and then what???

(b) (6), (b) (7)(C) Yes, list comes back with an icon and you export it and it can be functional but you have to do it right.

(b) (6), (b) (7)(C) So for Petsmart did you get a scrubbed list?

(b) (6), (b) (7)(C) We used (b) (6), (b) (7)(C) list sent from (b) (6), (b) (7)(C) but I don't know 100% where/when (b) (6), (b) (7)(C) list was scrubbed. I used list just to do a few calls for demonstrations.

(b) (6), (b) (7)(C) What list did you use? What did it look like? Look like these?

(b) (6), (b) (7)(C) Could have been a printed list and it likely had an icon or field from salesforce. But that campaign was abandoned because it was just kids and just kept the lists for when people needed somebody to call.

(b) (6), (b) (7)(C) Can you picture list from (b) (6), (b) (7)(C) that you used to make demo calls? Were you in presence of (b) (6), (b) (7)(C) when you made these calls?

(b) (6), (b) (7)(C) I only borrowed list from (b) (6), (b) (7)(C) to make demo calls.... Maybe 1-2 calls at (b) (6), (b) (7)(C) desk to talk to somebody about finding work.

(b) (6), (b) (7)(C) But what about not demo calls, just your calls, Did you make any calls not in presence of (b) (6), (b) (7)(C)?

(b) (6), (b) (7)(C) No, not that I recall.... I probably made some calls from (b) (6), (b) (7)(C) list ... maybe a few at (b) (6), (b) (7)(C) desk... But not what I do. I don't cold call. I do Seminars.

(b) (6), (b) (7)(C) Did you make any at your desk? Cell phone?

(b) (6), (b) (7)(C) Maybe a few at my desk but could not have made calls from my cell phone.

(b) (6), (b) (7)(C) Anywhere else besides desk you could have made calls?

(b) (6), (b) (7)(C) Wherever there is an office phone.

(b) (6), (b) (7)(C) What was the purpose of making cold calls if that is not what you do or you don't think it is effective?

(b) (6), (b) (7)(C) Comradery, make some calls too, if they are making lots of calls to encourage. I also had pressure from (b) (6), (b) (7)(C) to make calls. So I would make a few dials to show how to make a call.

(b) (6), (b) (7)(C) How did you know the lists you would use or the numbers you would call had been scrubbed?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told me they were on multiple occasions.

(b) (6), (b) (7)(C) Did you ask (b) (6), (b) (7)(C) when you borrowed them?

(b) (6), (b) (7)(C) Probably. They all know to scrub. They are trained to scrub and trained that all calling campaigns need approval from (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) How many calls did you make?

(b) (6), (b) (7)(C) 5-10 calls at most. I don't like cold calls. I don't feel comfortable and I don't think they work.

(b) (6), (b) (7)(C) What about calls made in February? Were they by yourself ? With (b) (6), (b) (7)(C) Who made them?

(b) (6), (b) (7)(C) I would sometimes listen in and be with (b) (6), (b) (7)(C) made the calls from my phone.

(b) (6), (b) (7)(C) Do you recall a recording of someone that was upset with you for cold calling? When and where was that?

(b) (6), (b) (7)(C) That was in December in a spare office

(b) (6), (b) (7)(C) Do you remember there being a field or icon for DNC on that list you used when making that call?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) Were you able to tell from the list if (b) (6), (b) (7)(C) scrubbed the numbers or not?

(b) (6), (b) (7)(C) No it looked like a home list I think or a spread sheet (b) (6), (b) (7)(C) had made.

(b) (6), (b) (7)(C) Did you go back to check

(b) (6), (b) (7)(C) or ask (b) (6), (b) (7)(C) what happened?

(b) (6), (b) (7)(C) No, I just said make sure that the caller is on the DNC. I just thought that maybe it was a mistake or a glitch in the system.

(b) (6), (b) (7)(C) What about the April 16th calls?

(b) (6), (b) (7)(C) Those were clients I think and sometimes they are not always in salesforce.

(b) (6), (b) (7)(C) Oh they are clients, well then who are they? Can you identify them?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C), I recognize (b) (6), (b) (7)(C) but I need to check the rest of the numbers. I think I was just returning calls.

(b) (6), (b) (7)(C) Well you have had this list and you did not check the list. I thought we were meeting about that.

(b) (6), (b) (7)(C) I didn't have enough time. I just got it a day or so ago.

(b) (6), (b) (7)(C) How much time did you spend trying to identify the numbers?

(b) (6), (b) (7)(C) Maybe 2-3 hours. I identified (b) (6), (b) (7)(C) and _____ (b) (6), (b) (7)(C) I was using the white pages to recognize them. Some of the other numbers I recognize but they might be branch clients instead of mine.

(b) (6), (b) (7)(C) If they were clients why didn't you leave messages?

(b) (6), (b) (7)(C) Well it looks like I did for sure on the one.

(b) (6), (b) (7)(C) But not the others?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) Okay let's look at the email we have with (b) (6), (b) (7)(C). In the email you have a list of campaigns and next to small business owners it says status "calling." Is that your status?

(b) (6), (b) (7)(C) No that would be (b) (6), (b) (7)(C) status. I was just helping (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) was doing the calling.

(b) (6), (b) (7)(C) But whose status is in the list?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Well where did (b) (6), (b) (7)(C) get the lead lists?

(b) (6), (b) (7)(C) Probably me. Only thing it could be was career builder. (b) (6), (b) (7)(C) had contacts and an old list or scraps things on paper I had from (b) (6), (b) (7)(C) But it could be a typo because I was froze out of career builder at that time.

(b) (6), (b) (7)(C) Where did you get (b) (6), (b) (7)(C) leads?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) calendar would have names and then I had some names scratched down that I remember having on paper.

(b) (6), (b) (7)(C) How did you get copies of (b) (6), (b) (7)(C) lead list?

(b) (6), (b) (7)(C) I just had a copy of an old list in June maybe? And I told (b) (6), (b) (7)(C) to scrub it and put it in salesforce.

(b) (6), (b) (7)(C) What are the requirements of salesforce?

(b) (6), (b) (7)(C) Used to keep track of who you called to track numbers etc. We are trained to use salesforce and want it all in salesforce.

(b) (6), (b) (7)(C) Did you track your calls?

(b) (6), (b) (7)(C) Not calls for (b) (6), (b) (7)(C) I would tell them to update their list if I made a call for them the trainee.

(b) (6), (b) (7)(C) You said you track calls? Where do you track them?

(b) (6), (b) (7)(C) In salesforce, if I have information about a client or prospect.

BREAK

Back at 10:17

(b) (6), (b) (7)(C) Now let's turn back to the campaigns listed in the email with (b) (6), (b) (7)(C) Tell me what these are again.

(b) (6), (b) (7)(C) Its leads I was helping (b) (6), (b) (7)(C) with

(b) (6), (b) (7)(C) What about the career builder makes you think it was a typo?

(b) (6), (b) (7)(C) Well it was a suspended service at that time. I did not have access. We had not paid or were not to date on payment.

(b) (6), (b) (7)(C) So it should not have said career builder or (b) (6), (b) (7)(C) list?

(b) (6), (b) (7)(C) Yes it was a typo.

(b) (6), (b) (7)(C) You said you were splitting cost of career builder with (b) (6), (b) (7)(C) but why would you split the cost if it was not your campaign?

(b) (6), (b) (7)(C) We paid it off in May but (b) (6), (b) (7)(C) had no leads. We had an agreement to split business if (b) (6), (b) (7)(C) did ever find clients from it.

(b) (6), (b) (7)(C) But you got it again after you paid off?

(b) (6), (b) (7)(C) Yeah well for the cost had access to 50 mil contacts and after (b) (6), (b) (7)(C) then it went to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) used it but when (b) (6), (b) (7)(C) left it went to (b) (6), (b) (7)(C) but then (b) (6), (b) (7)(C) had a different approach and used more LinkedIn.

(b) (6), (b) (7)(C) So you had an arrangement to split business with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) if leads came through. Did you share your login with anyone else?

(b) (6), (b) (7)(C) No I only shared CareerBuilder with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Okay now we want to show you two emails with (b) (6), (b) (7)(C) about strategy meetings where it looks like either you or (b) (6), (b) (7)(C) accepted the meeting. What did you talk about at these meetings?

(b) (6), (b) (7)(C) We talked strategy

(b) (6), (b) (7)(C) On one it says call with CareerBuilder? Why did you call or did you call?

(b) (6), (b) (7)(C) I called them to pay balance and continue the subscription and try to negotiate a better price.

(b) (6), (b) (7)(C) What was the name on the account with CareerBuilder?

(b) (6), (b) (7)(C) It was (b) (6), (b) (7)(C) which (b) (6), (b) (7)(C) picked when (b) (6), (b) (7)(C) made it and signed the contract. But I changed it to my name. To (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) What did you say to them when you called?

(b) (6), (b) (7)(C) When I talked to them I said I was calling because I was interested in their resumes package.

(b) (6), (b) (7)(C) Did you say you were from Merrill Lynch?

(b) (6), (b) (7)(C) No, they did not ask. I think they asked for the account number and then I changed the name. All I remember is that I paid off the balance and changed the name. I do not know if I closed it and opened a new account or if I just revised the existing account.

(b) (6), (b) (7)(C) Why did you use your name and personal email instead of Merrill Lynch?

(b) (6), (b) (7)(C) I think it was because they had a different kind of website and it was hard to pay so maybe that is why.

(b) (6), (b) (7)(C) Are there different types of accounts on CB?

(b) (6), (b) (7)(C) Different packages and one just gives you resumes

(b) (6), (b) (7)(C) Did you have to represent what the resumes were for when you signed up? Did you sign a contract?

(b) (6), (b) (7)(C) I did not have to represent anything in signing up. I do not recall signing a contract.

(b) (6), (b) (7)(C) Well it says on the invoice you gave us that you got the talent discovery recruitment package. We would love to know what the contract said that you signed when signed up for CB.

Alan/ (b) (6), (b) (7)(C) Agree that we will look for the contract with CB based on their request.

(b) (6), (b) (7)(C) At your meeting with (b) (6), (b) (7)(C) did you discuss anything else?

(b) (6), (b) (7)(C) No it was strategy and I can't remember the exact dates of the meetings.

(b) (6), (b) (7)(C) Now let's look at the May 21, email with (b) (6), (b) (7)(C) what is it?

(b) (6), (b) (7)(C) It is an email with a list of contacts and leads.

(b) (6), (b) (7)(C) Where is the list from?

(b) (6), (b) (7)(C) Probably, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Well it's not a forward so where is it from?

(b) (6), (b) (7)(C) Maybe from the calendars and the appointments etc.

(b) (6), (b) (7)(C) The list is 18 pages long? Those are all appointments?

(b) (6), (b) (7)(C) I could have added leads that I had too. It is a probably a compilation I put together and sent it to (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to put it in salesforce and scrub it before (b) (6), (b) (7)(C) used it.

(b) (6), (b) (7)(C) How did you tell (b) (6), (b) (7)(C) It's not in the email?

(b) (6), (b) (7)(C) In person and (b) (6), (b) (7)(C) said sure.

(b) (6), (b) (7)(C) And the list was for you to call or (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) For (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Do you know if (b) (6), (b) (7)(C) scrubbed it?

(b) (6), (b) (7)(C) No.

(b) (6), (b) (7)(C) Do you know that (b) (6), (b) (7)(C) called them?

(b) (6), (b) (7)(C) No I wasn't with (b) (6), (b) (7)(C) but probably. I saw some on the call log but I wasn't there with (b) (6), (b) (7)(C) I may have popped in a few times when (b) (6), (b) (7)(C) was calling or doing calls to check on (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) On that day?

(b) (6), (b) (7)(C) Maybe on that day I can't remember.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) cold called how often? How did you not know if you were there?

(b) (6), (b) (7)(C) Would walk around and check on people. I sort of knew from the call list and it was (b) (6), (b) (7)(C) making the calls on the May dates. But some of the names we had prior consent because we had worked with them or they said to call back.

(b) (6), (b) (7)(C) Prior consent on some of them? Tell me about that.

(b) (6), (b) (7)(C) we use notes to determine prior consent. Ones that we have talked to before with notes and financial info are okay for call back.

(b) (6), (b) (7)(C) If it is just a number and a name then there is no prior consent then?

(b) (6), (b) (7)(C) Some I know that we worked for before because I know the names and talked to some of them when I was helping but I did not cold call them.

(b) (6), (b) (7)(C) How do you know?

(b) (6), (b) (7)(C) I don't know what happened to the data after (b) (6), (b) (7)(C) left.

They were (b) (6), (b) (7)(C) contacts and then (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) How can you tell which numbers have been reached from cold call?

(b) (6), (b) (7)(C) Could have come from different sources ... I don't know how (b) (6), (b) (7)(C) could tell the difference or how they could tell. (Mentioned another gentleman's name here but I missed it).

(b) (6), (b) (7)(C) If (b) (6), (b) (7)(C) worked with them why give them to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was not pursuing that .

(b) (6), (b) (7)(C) How did you make the list? Did you start with your calendar or (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Not sure... (b) (6), (b) (7)(C) maybe or mine. I shared leads I had.

(b) (6), (b) (7)(C) Where else did you get it from?

(b) (6), (b) (7)(C) All calendar maybe... tried to give leads to the trainees to help.

(b) (6), (b) (7)(C) Where in August? Did the numbers come from? Did you call?

(b) (6), (b) (7)(C) No calls, I don't know.

(b) (6), (b) (7)(C) Who made the calls?

(b) (6), (b) (7)(C) I don't know probably (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Now look at this email on August 16th with a list from (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) asks you to print.

Why did (b) (6), (b) (7)(C) email it to you?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7)(C) ask you to print it?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Do you still have the list?

(b) (6), (b) (7)(C) I gave everything to (b) (6), (b) (7)(C) I may have had a few pages of the list printed but I gave them to (b) (6), (b) (7)(C) to scrub and call.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) complain about having to type in the entire printed list in to salesforce.

(b) (6), (b) (7)(C) No it was a free list.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) call from the list.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) may have

(b) (6), (b) (7)(C) Did you ever ask (b) (6), (b) (7)(C) if the calling from the list was going good or bad?

(b) (6), (b) (7)(C) Where it refers to resume cold call is it referring to this list? Should we understand then that you called?

(b) (6), (b) (7)(C) No did not call. I may have popped in

(b) (6), (b) (7)(C) Did you tell (b) (6), (b) (7)(C) to call?

(b) (6), (b) (7)(C) No, I gave (b) (6), (b) (7)(C) a list and it was up to (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) wanted to call or not. No one was forcing (b) (6), (b) (7)(C) I would have gave (b) (6), (b) (7)(C) the list and told (b) (6), (b) (7)(C) to scrub it and put it in salesforce.

(b) (6), (b) (7)(C) Did you tell (b) (6), (b) (7)(C) to scrub? Actually?

(b) (6), (b) (7)(C) Yes, I told (b) (6), (b) (7)(C)

Problem is I give them a list and ask them to scrub so it goes into their salesforce and it isn't in mine because if I put it in there it would junk up my system.

(b) (6), (b) (7)(C) Do you remember ever running into other employee clients?

(b) (6), (b) (7)(C) Yes vaguely I remember that happening from (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) What about the June days?

(b) (6), (b) (7)(C) I assume (b) (6), (b) (7)(C) made the calls because in the blocks of cold calls (b) (6), (b) (7)(C) was the only trainee there at that time...

(b) (6), (b) (7)(C) What about call where potential said "let me guess you are from Merrill Lynch" Were you there?

(b) (6), (b) (7)(C) Yes, may have been there or popped in.

(b) (6), (b) (7)(C) How many days did you pop in?

(b) (6), (b) (7)(C) I don't know sometimes they would put time on my calendar when (b) (6), (b) (7)(C) was going to cold call and there were days where (b) (6), (b) (7)(C) was on (b) (6), (b) (7)(C) own and I would walk by and see and come in.

(b) (6), (b) (7)(C) Why did (b) (6) call from the conference room?

(b) (6), (b) (7)(C) I don't know (b) (6) would move around.

(b) (6), (b) (7)(C) Can you call from your desktop at your desk or at (b) (6), (b) (7)(C) desk?

(b) (6), (b) (7)(C) Yes

(b) (6), (b) (7)(C) Can you do that in the conference room?

(b) (6), (b) (7)(C) Yes, but I did not see them use the click and call feature on the desktop in the conference room.

(b) (6), (b) (7)(C) Why would people tell them that (b) (6), (b) (7)(C) was making calls with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Not sure maybe they just saw me in there with (b) (6), (b) (7)(C) which was true.

(b) (6), (b) (7)(C) What did the list (b) (6), (b) (7)(C) called from look like?

(b) (6), (b) (7)(C) A spreadsheet... printed... not sure or don't recall what it looked like.

BREAK @ 11:16

Text Questions *Paraphrased:**

(b) (6), (b) (7)(C) In the email you sent to me you said you had no texts with associates or trainees only to send them reminders. But then you produced these. Can you explain that?

(b) (6), (b) (7)(C) I do not keep any messages on my phone. I delete them regularly.

(b) (6), (b) (7)(C) Where did you get these messages if you delete them?

(b) (6), (b) (7)(C) On my computer or the cloud

(b) (6), (b) (7)(C) When do you delete your messages?

(b) (6), (b) (7)(C) I delete them every day.

(b) (6), (b) (7)(C) (Asks about (b) (6), (b) (7)(C) texts...)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was a difficult employee. (b) (6), (b) (7)(C) would not come in and miss meetings and come in late and work weird hours...

(b) (6), (b) (7)(C) Why did you let (b) (6), (b) (7)(C) do that?

(b) (6), (b) (7)(C) I don't think I let (b) (6), (b) (7)(C) do that I talked to (b) (6), (b) (7)(C) multiple times about this.

(b) (6), (b) (7)(C) What about texting with (b) (6), (b) (7)(C) Do you have texts with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I have none on my phone but will check on computer/cloud.

(b) (6), (b) (7)(C) Have you ever used resumes personally to produce cold calls?

(b) (6), (b) (7)(C) No not personally.

(b) (6), (b) (7)(C) Okay let's look at the texts on March 24. What are you trying to do here or what is happening?

(b) (6), (b) (7)(C) We are strategizing over text.

(b) (6), (b) (7)(C) When you say "we" in the text you mean (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Meant me too but never did it and never made a pipeline.

(b) (6), (b) (7)(C) You said you had a couple of 100 printed resumes. Where did you have them?

(b) (6), (b) (7)(C) In a binder in the office from job fairs

(b) (6), (b) (7)(C) Did they hand them to you for jobs at Merrill Lynch?

(b) (6), (b) (7)(C) It seems unlikely that those career fairs would be a good idea for potentials.

(b) (6), (b) (7)(C) No, they could be. And I remember now that the career fair gave me a resume for all the people in attendance and that was where (b) (6) got the resumes.

(b) (6), (b) (7)(C) What happened to these resumes?

(b) (6), (b) (7)(C) Probably threw them out. I could have a link maybe in my email from the conference. But likely got rid of them in June when we moved offices.

(b) (6), (b) (7)(C) It says you are reading cold call material ion the text. What cold call material were you reading?

(b) (6), (b) (7)(C) Bill Good materials on cold calling

(b) (6), (b) (7)(C) Why were you reading it? To prepare to do it?

(b) (6), (b) (7)(C) I thought about it but also I read it just to help (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Why in the proposed script is the opening line about leaving a 401k at ____ company?

(b) (6), (b) (7)(C) Because they may be leaving a job if they are submitting resumes and got info from resumes.

(b) (6), (b) (7)(C) Why do you say in the text that it is a violation of Monster's terms of service?

(b) (6), (b) (7)(C) I looked I think years ago at terms of service and do not remember why you could not then. But I realized now you could get resumes easily because they are essentially public information. You can get it on google etc.

(b) (6), (b) (7)(C) Why use CB then?

(b) (6), (b) (7)(C) CB is faster and easier than if we were to search because they aggregate the information.

(b) (6), (b) (7)(C) Did you look at their terms?

(b) (6), (b) (7)(C) No I just talked to them on the phone.

(b) (6), (b) (7)(C) Let's skip the May 8th texts and go to May 13th text that says "call you at 6:30 pm" Did you call?

(b) (6), (b) (7)(C) I may have but with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Where it says "plan B" on May 18 text what is (b) (6), (b) (7)(C) talking about?

(b) (6), (b) (7)(C) Not opening accounts. May have planned to help (b) (6), (b) (7)(C) but not call on my own.

(b) (6), (b) (7)(C) Looking to the May 30th text "Why talk to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) needs approval from (b) (6), (b) (7)(C) for campaign.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) talk to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Must have based on it being around the same time as the emails with (b) (6), (b) (7)(C) I provided about scrubbing.

(b) (6), (b) (7)(C) Looking to the June 2 texts on call and lead list. Who is in charge of scrubbing?

(b) (6), (b) (7)(C) The person that is running the campaign.

(b) (6), (b) (7)(C) If you make calls are you the one responsible for knowing if it has been scrubbed?

(b) (6), (b) (7)(C) ...to an extent but if (b) (6), (b) (7)(C) handed me a list then I would assume (b) (6), (b) (7)(C) scrubbed it because I told (b) (6), (b) (7)(C) to scrub it as you can see by texts.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) says here "did you call" so (b) (6), (b) (7)(C) expected you to call?

(b) (6), (b) (7)(C) Maybe make a few dials without (b) (6), (b) (7)(C) or maybe with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) So why do just a few? What is the point?

(b) (6), (b) (7)(C) To work out the script.

(b) (6), (b) (7)(C) Did you work out a script?

(b) (6), (b) (7)(C) I think so. We edited it back and forth on paper.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) get approval from (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I think so based on the emails.

(b) (6), (b) (7)(C) Is this script compliant with ML standards?

(b) (6), (b) (7)(C) I think so, because (b) (6), (b) (7)(C) approved.

(b) (6), (b) (7)(C) Moving to June 4th text you say you called for 1 hour. Do you remember doing that?

(b) (6), (b) (7)(C) Maybe it says so but I don't remember doing it for an hour.

(b) (6), (b) (7)(C) How many calls could be done in an hour?

(b) (6), (b) (7)(C) 10-15 ... it depends. Corporate are less likely to answer so could do more. If personal then more likely to answer.

(b) (6), (b) (7)(C) On resumes is there more cell or home numbers?

(b) (6), (b) (7)(C) I would guess cell

(b) (6), (b) (7)(C) Why more cell?

(b) (6), (b) (7)(C) What people use today.

(b) (6), (b) (7)(C) You say you got one lead. Who?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Why make more calls in the morning?

(b) (6), (b) (7)(C) Just to establish a regular practice but the thing is I didn't only for purpose of working on script and to figure out campaign because of the (b) (6), (b) (7)(C) webex presentation. I just did a few dials.

(b) (6), (b) (7)(C) How many is a few?

(b) (6), (b) (7)(C) 5, 10, 15

(b) (6), (b) (7)(C) How come you don't talk about the script anymore in the texts?

(b) (6), (b) (7)(C) We talked in person when (b) (6), (b) (7)(C) came back. We were moving offices and a lot of other stuff was going on.

(b) (6), (b) (7)(C) On June 8 text you talk about a list you are working on... tell us about that.

(b) (6), (b) (7)(C) I may have started a list but I never finished it. I don't remember but I don't think I ever called I was simply focused on looking at data and occupation and never got to the end of the process.

(b) (6), (b) (7)(C) When you say you called on June 4th did you use (b) (6), (b) (7)(C) list or yours?

(b) (6), (b) (7)(C) I used (b) (6), (b) (7)(C) list mine wasn't ever finished.

(b) (6), (b) (7)(C) How would you build list?

(b) (6), (b) (7)(C) I would search job and occupation and then take information and paste it into a spreadsheet..... etc.

(b) (6), (b) (7)(C) Did you scrub the list?

(b) (6), (b) (7)(C) No I never finished it.

(b) (6), (b) (7)(C) Did you call from the list?

(b) (6), (b) (7)(C) I do not recall but I do not think so

(b) (6), (b) (7)(C) Where did you save your list?

(b) (6), (b) (7)(C) I don't recall. Maybe saved on H drive on work computer but might have deleted it. I don't know. I do not recall.

I never finished the list but if I had I would have given it to (b) (6), (b) (7)(C) because it was (b) (6), (b) (7)(C) campaign and I said I would help (b) (6), (b) (7)(C) If it was my list I would have scrubbed it.

(b) (6), (b) (7)(C) What would you call it if saved?

(b) (6), (b) (7)(C) Maybe lead list. Could be excel or could be txt.

(b) (6), (b) (7)(C) Why were there two lists?

(b) (6), (b) (7)(C) I did not finish my list and I probably would have given it to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) What list did you use for the day you said you made calls for an hour?

(b) (6), (b) (7)(C) It had to be (b) (6), (b) (7)(C) I was still working on it a week later. And it was (b) (6), (b) (7)(C) campaign.

(b) (6), (b) (7)(C) In the June 21st text about (b) (6), (b) (7)(C) database, what are you talking about?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was a member and wanted me to join to get access too.

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7)(C) think you were doing so much cold calling?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) thought I did more than I did but we talked about it....

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7)(C) send email to msn account instead of ML?

(Agreed here to provide any emails with (b) (6), (b) (7)(C) on personal msn account)

(b) (6), (b) (7)(C) I don't know why. (b) (6), (b) (7)(C) could have sent to ML email too.

(b) (6), (b) (7)(C) In June 28th emails with the 5k to 300 a day, what are you trying to help with?

(b) (6), (b) (7)(C) I was trying to automate the process.

(b) (6), (b) (7)(C) Did you do that?

(b) (6), (b) (7)(C) No I couldn't make it work so no

(b) (6), (b) (7)(C) In the June 30 texts, did you make the calls

(b) (6), (b) (7)(C) No I did not make the calls.

(b) (6), (b) (7)(C) Why were you going to talk to (b) (6), (b) (7)(C)? Did (b) (6), (b) (7)(C) have CB access?

(b) (6), (b) (7)(C) I asked (b) (6), (b) (7)(C) about it.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) did not have access to CB?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) Did you send (b) (6), (b) (7)(C) a list?

(b) (6), (b) (7)(C) I could have...

(b) (6), (b) (7)(C) Did you tell (b) (6), (b) (7)(C) to scrub the list?

(b) (6), (b) (7)(C) I'm sure I did.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) work with (b) (6), (b) (7)(C) there?

(b) (6), (b) (7)(C) Yes

(b) (6), (b) (7)(C) In July 3rd texts what was happening?

(b) (6), (b) (7)(C) I was advising (b) (6), (b) (7)(C) to wait.

(b) (6), (b) (7)(C) In the August 16th text why did (b) (6), (b) (7)(C) again send the list to your personal email to print?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Why didn't you ask (b) (6), (b) (7)(C) to send it to work or ask why (b) (6), (b) (7)(C) was sending there?

(b) (6), (b) (7)(C) I don't know. (b) (6), (b) (7)(C) should have used system. I don't know what list it was or what the purpose was.

(b) (6), (b) (7)(C) Did you print it?

(b) (6), (b) (7)(C) Yes, I must have.

(b) (6), (b) (7)(C) Print at home or at work?

(b) (6), (b) (7)(C) Work.

(b) (6), (b) (7)(C) Does (b) (6), (b) (7)(C) have a printer?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Do you think (b) (6), (b) (7)(C) had scrubbed this list.

(b) (6), (b) (7)(C) I don't know, maybe not.

(b) (6), (b) (7)(C) In the August 29th text what is this? Who is (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) offered to build (b) (6), (b) (7)(C) a list and (b) (6), (b) (7)(C) needed the leads. I said I would pay.

(b) (6), (b) (7)(C) Why pay someone else when you have CB and you can do it.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was lazy and needed help and (b) (6), (b) (7)(C) was in town....

(b) (6), (b) (7)(C) Was this against policy?

(b) (6), (b) (7)(C) I think it was within the gift policy and this was a gift.

(b) (6), (b) (7)(C) But there were two payments one for \$50 and one for \$100.

(b) (6), (b) (7)(C) I don't remember the \$50 but I was just trying to help (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) If you had made the payment once for \$150 dis it not comply with the gifting policy?

(b) (6), (b) (7)(C) Probably not.

(b) (6), (b) (7)(C) If it was not a gift and for services to help (b) (6), (b) (7)(C) and to help you is it still within policy?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) In the September 9th text where it says "can you scrub my leads" did you scrub them?

(b) (6), (b) (7)(C) I tried to but I had an issue and could not.

(b) (6), (b) (7)(C) Did you send it back to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) No (b) (6), (b) (7)(C) must have taken care of it.

(b) (6), (b) (7)(C) In the September 9th text about 350 and (b) (6), (b) (7)(C) are these the leads you paid for?

(b) (6), (b) (7)(C) They must have been. I was just trying to help (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) In the October 5th text asking how much (b) (6), (b) (7)(C) owes you for CB, why were you thinking about the \$?

(b) (6), (b) (7)(C) I felt (b) (6), (b) (7)(C) was having problems and (b) (6), (b) (7)(C) had brought in a client so I was trying to help (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was not an early riser? So you had to tell (b) (6), (b) (7)(C) to come in?

(b) (6), (b) (7)(C) Yes I constantly had to look for (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) In the November emails about (b) (6), (b) (7)(C) What is going on? Did (b) (6), (b) (7)(C) have access?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) could have.

(b) (6), (b) (7)(C) You don't remember? Were you logging in?

(b) (6), (b) (7)(C) Not in June I was too busy moving etc.

(b) (6), (b) (7)(C) Did you have conversations with (b) (6), (b) (7) about it? Did you know (b) (6), (b) (7)(C) used it?

(b) (6), (b) (7)(C) No and if so very brief.

(b) (6), (b) (7)(C) What about (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) No.

(b) (6), (b) (7)(C) What conversations did you have with (b) (6), (b) (7) about CB.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had (b) (6), (b) (7)(C) (sp?) and Petsmart and if we talked it was vaguely about it. I thought (b) (6), (b) (7)(C) talked to (b) (6), (b) (7) ...

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7)(C) get the leads? Could (b) (6), (b) (7)(C) have called for (b) (6), (b) (7) or (b) (6), (b) (7) call for (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I don't know. Speculate a deal of sorts.

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7) leave?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was frustrated and thought (b) (6), (b) (7)(C) would be made a partner and so (b) (6), (b) (7)(C) went to work for IRA.

(b) (6), (b) (7)(C) It says sent prospects for follow up? What does that mean?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) gave it to (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) would have given it to me to follow up.

Klair: Looking at the November 13th texts you said in the letter that (b) (6), (b) (7)(C) must be calling too? On the DNC?

(b) (6), (b) (7)(C) Speculated yes because (b) (6), (b) (7)(C) was getting from TSAs and the cold calls were a smoke show... because others had 0 results ... so how could (b) (6), (b) (7)(C) being do it.

(b) (6), (b) (7)(C) What did (b) (6), (b) (7)(C) say?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) was scrubbing lists

But, (b) (6), (b) (7)(C) said that businesses were scrubbing out so everyone cannot believe (b) (6), (b) (7)(C) success. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were complaining and putting pressure on me so I went to talk to (b) (6), (b) (7)(C) about what (b) (6), (b) (7)(C) was doing. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) was buying leads on websites and cell phones.

(b) (6), (b) (7)(C) Did you know that calls can't be called in AZ?

(b) (6), (b) (7)(C) Yes, but I had misunderstood it originally. I thought law was could not call AZ area code but just can't call cell phones physically in state.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) say thing about scrub for any reason?

(b) (6), (b) (7)(C) No, just real quick answer. So I thought okay nothing wrong (b) (6), (b) (7)(C) scrubbed.

(b) (6), (b) (7)(C) Did you have any reason to think that (b) (6), (b) (7)(C) was allowing (b) (6), (b) (7)(C) to call DNC #'s?

(b) (6), (b) (7)(C) I may have speculated because I heard things about interns paid to call and there was a bunch of people calling so hard to believe that it was going on without any one knowing it is going on. I think a number of people in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) interns were calling resumes.

(b) (6), (b) (7)(C) Did you ask any questions of others?

(b) (6), (b) (7)(C) I talked to (b) (6), (b) (7)(C) but did not think... so must be in order.

(b) (6), (b) (7)(C) When did you first think that people were doing something they shouldn't?

(b) (6), (b) (7)(C) When the investigation started but not before.

(b) (6), (b) (7)(C) How do you think we could prevent this in the future?

(b) (6), (b) (7)(C)

- Weekly branch level reporting
- Limit lists to 250 (because people don't scrub every 50 days)
- Mandate edu. because people don't understand laws
- People should not automatically be provisioned for entering DNC because the tool is complicated, and they do it wrong...
- Should be easier to enter prospects into salesforce so (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) can do it correctly
- More awareness of what is being done because (b) (6), (b) (7)(C) was not always aware of what (b) (6), (b) (7)(C) was approving or reviewing.
- But the heart of it is the need for branch level reporting

(b) (6), (b) (7)(C) Were you surprised to hear about (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I did not know what was going on.

My (b) (6), (b) (7)(C) went to meetings about cold calls where it was encouraged, and (b) (6), (b) (7)(C) was pushing back because (b) (6) thought (b) (6), (b) (7)(C) was dialing corporate numbers. (b) (6), (b) (7)(C) was upset that (b) (6) thought (b) (6), (b) (7)(C) was calling resumes. (b) (6), (b) (7)(C) even challenged (b) (6), (b) (7)(C) in front of (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) How did (b) (6), (b) (7)(C) tell you about that?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) talked to me and sent an email and said that (b) (6) felt stifled by the DNC

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were both sort of pushing on me and pressuring me to do something which is why I talked to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Okay let's look at the November 2nd text. Would (b) (6), (b) (7)(C) or could (b) (6), (b) (7)(C) assume this is an endorsement of cold calling cell phones.

(b) (6), (b) (7)(C) No not endorsement. (b) (6), (b) (7)(C) had to scrub the list. (b) (6), (b) (7)(C) knew that. It may endorse cold calling but not calling cell phones. (b) (6), (b) (7)(C) needed to scrub.

I thought (b) (6) was scrubbing the lists. I had asked and that was the answer nothing else.

(b) (6), (b) (7)(C) But did you say what (b) (6) was doing was fine?

(b) (6), (b) (7)(C) I thought (b) (6), (b) (7)(C) was scrubbing the lists and that it was fine if under that assumption.

(b) (6), (b) (7)(C) Looking to the November 13th text, did you learn something new between your talk with (b) (6), (b) (7)(C) and here?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) What did you hear from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was frustrated, so I said I already talked to (b) (6), (b) (7)(C) and if (b) (6), (b) (7)(C) wants to go talk to (b) (6), (b) (7)(C) can.

(b) (6), (b) (7)(C) Why did (b) (6), (b) (7)(C) quit? Did (b) (6), (b) (7)(C) feel a pressure to cold call?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) quit because the job didn't make (b) (6), (b) (7)(C) happy.

(b) (6), (b) (7)(C) Not because of the pressure to violate policies?

(b) (6), (b) (7)(C) No, (b) (6), (b) (7)(C) did not agree with the methodology presented on cold calling but neither do I. They said cold call was the way and I don't think that is right.

(b) (6), (b) (7)(C) In the November 16th text (b) (6), (b) (7)(C) changed the CB password. Why? Was it because you were using it again?

(b) (6), (b) (7)(C) I don't know maybe to keep away from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) used to get into disagreements.

(b) (6), (b) (7)(C) did you use the CB though?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) Looking at the January 8th text about the guy who was rude and yelled at you and was to be removed from call list.... Do you remember that?

(b) (6), (b) (7)(C) Yes, (b) (6), (b) (7)(C) name was (b) (6), (b) (7)(C) and I reminded (b) (6), (b) (7)(C) after that to make sure (b) (6), (b) (7)(C) was scrubbed and that the lists were in salesforce etc.

(b) (6), (b) (7)(C) Do you remember how many other calls you made then?

(b) (6), (b) (7)(C) 5-10

(b) (6), (b) (7)(C) What about this both lists part?

(b) (6), (b) (7)(C) I don't know what (b) (6), (b) (7)(C) is talking about.

(b) (6), (b) (7)(C) Was the list used in excel?

(b) (6), (b) (7)(C) I can't remember.

(b) (6), (b) (7)(C) Why hadn't you told (b) (6), (b) (7)(C) to put it on the DNC tool?

(b) (6), (b) (7)(C) I told (b) (6), (b) (7)(C) in person before and reminded (b) (6), (b) (7)(C) after. We discussed the (b) (6), (b) (7)(C) call a couple of times and I told (b) (6), (b) (7)(C) to submit to DNC tool

(b) (6), (b) (7)(C) On February 5th text you tell (b) (6), (b) (7)(C) to bring (b) (6), (b) (7)(C) cell phone. What is the joke?

(b) (6), (b) (7)(C) It was just to tell (b) (6), (b) (7)(C) to bring the phone if (b) (6), (b) (7)(C) wanted to apply to job because we were going to be out of office. Not about cold calling.

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) cold call from cell?

(b) (6), (b) (7)(C) I don't know

(b) (6), (b) (7)(C) On March 27th text (b) (6), (b) (7)(C) talks about transferring CB to your name. Why?

(b) (6), (b) (7)(C) Transfer so I can manage we were behind several invoices and (b) (6), (b) (7)(C) was not meeting (b) (6), (b) (7)(C) numbers and getting ready to leave maybe. (b) (6), (b) (7)(C) had signed the contract and probably did not want to be liable for it.

(b) (6), (b) (7)(C) When did you pay it off?

(b) (6), (b) (7)(C) May

(b) (6), (b) (7)(C) Is it the same account or a new one now?

(b) (6), (b) (7)(C) I don't know.

(b) (6), (b) (7)(C) Looking to an email with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who are the other people copied?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and it had the lead lists from three lead list brokers that were not good...I do it for seminars and was trying to convince them to do seminars. Have (b) (6), (b) (7)(C) do seminars for them and I could provide info but they did not do it because (b) (6), (b) (7)(C) dislikes buy in.

(b) (6), (b) (7)(C) Did you always scrub info-free lists?

(b) (6), (b) (7)(C) A-lot 10-15 recent I always scrub and use for seminars.

Previous Comments:

(b) (6), (b) (7)(C) You previously said that certain (b) (6), (b) (7)(C) should stop calling women...

(b) (6), (b) (7)(C) No it wasn't so much a comment as a story that got twisted. Where they had called HR and women answered and reported them and I just thought that they should not start with HR calls. Etc.

(b) (6), (b) (7)(C) did you describe women as nasty snippers?

(b) (6), (b) (7)(C) No

(b) (6), (b) (7)(C) In the story?

(b) (6), (b) (7)(C) No, anyone can be a snipper and I did not call women that.

(b) (6), (b) (7)(C) you also said something about a white woman being a prize for a black man?

(b) (6), (b) (7)(C) No this comes from when I unfortunately talked to (b) (6), (b) (7)(C) at one point about dating and (b) (6), (b) (7)(C) had brought up being chased by a black man and how they liked blondes.

(b) (6), (b) (7)(C) was mental. (b) (6), (b) (7)(C) had showed me a picture of (b) (6), (b) (7)(C) and said (b) (6), (b) (7)(C) but then (b) (6), (b) (7)(C) came, and it looked nothing like (b) (6), (b) (7)(C) was a normal (b) (6), (b) (7)(C) not a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had made up all kind of stories.

(b) (6), (b) (7)(C) Did you tell an (b) (6), (b) (7)(C) that they should focus on calling white male sounding names?

(b) (6), (b) (7)(C) No did not say it that way. It was (b) (6), (b) (7)(C) was calling foreign engineers and not having success and I told (b) (6), (b) (7)(C) to call others with a different occupation or be more inclusive in (b) (6), (b) (7)(C) calling and not focus on just that group. Really why would I say that really, we want to call anyone with money and so I would never say that.

(b) (6), (b) (7)(C) So you deny saying that you should deny a prospect with foreign name or saying to only call white or discriminate?

(b) (6), (b) (7)(C) No I did not say anything like that I just said to call others and be more inclusive.

EXHIBIT D

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, May 23, 2018 10:50 AM
To: (b) (6), (b) (7)(C)
Subject: Lead List Cold Calling Checklist.docx
Attachments: Lead List Cold Calling Checklist.docx

Please review the telemarketing policy and requirements with (b) (6), (b) (7)(C) per our conversation.
Thanks,

(b) (6), (b) (7)(C)

14636 N Scottsdale Rd. Suite 325
Scottsdale, AZ 85254

T (b) (6), (b) (7)(C)

F (866) 303-1854

(b) (6), (b) (7)(C)@ml.com



Merrill Lynch

Bank of America Corporation

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, May 23, 2018 10:52 AM
To: (b) (6), (b) (7)(C)
Subject: Leads List Cold Calling Scripts.pptx
Attachments: Leads List Cold Calling Scripts.pptx

Here is a policy regarding call scripts and lead lists.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Bank of America Merrill Lynch

and

CASE 28-CA-255012

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
Employer, Bank of America Merrill Lynch

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME:	Jonathan C. Fritts		
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SIGNATURE:	<i>Jonathan C. Fritts/s</i>		
	(Please sign in ink.)		
DATE:	1/24/20		

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

(b) (6), (b) (7)(C)

and

CASE 28-CA-255012

BANK OF AMERICA MERRILL LYNCH

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

Bank of America Merrill Lynch

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: J. Carlos Gonzalez
MAILING ADDRESS: Morgan, Lewis & Bockius LLP, 300 S. Grand Ave., 22nd Fl., Los Angeles CA 90071
E-MAIL ADDRESS: carlos.gonzalez@morganlewis.com
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SIGNATURE: *J. Carlos Gonzalez*
(Please sign in ink.)
DATE: 2/3/2020

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

Morgan Lewis

J. Carlos Gonzalez

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carlos.gonzalez@morganlewis.com

February 7, 2020

VIA ELECTRONIC FILING AND E-MAIL

Nicholas Gordon
Field Attorney
National Labor Relations Board
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
nicholas.gordon@nrlb.gov

Re: Bank of America Merrill Lynch, Case Nos. 28-CA-254290 and 28-CA-255012

Dear Mr. Gordon:

Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch” or the “Company”)¹ provides this preliminary position statement concerning the supervisory status of (b) (6), (b) (7)(C) or “Charging Party”).² The charges should be dismissed because, as a threshold matter and at all material times, the Charging Party was a supervisor excluded from the coverage of National Labor Relations Act (the “Act”). Specifically, the Charging Party was (b) (6), (b) (7)(C) for the Company. In that position, the Charging Party supervised all of the employees in the Company’s branch office in (b) (6), (b) (7)(C) Arizona, and (b) (6) possessed numerous indicia of supervisory authority under Section 2(11) of the Act, including but not limited to the authority to hire, discipline, and direct employees, and/or the authority to effectively recommend such actions.

¹ In the instant unfair labor practice charges, (b) (6), (b) (7)(C) names “Bank of America Merrill Lynch” as (b) (6) employer. Bank of America Merrill Lynch is simply a marketing name for Bank of America’s Global Banking and Global Markets businesses. At all relevant times, (b) (6), (b) (7)(C) was employed by Merrill Lynch, which is an affiliate of Bank of America. Accordingly, for purposes of this position statement, we presume that (b) (6), (b) (7)(C) intended to name Merrill Lynch as (b) (6) “Employer” and proceed accordingly.

² The Company submits this position statement solely for the Board’s use and requests that the Board preserve the confidentiality of the statement and its exhibits. To that end, the Company further requests that the Board not reveal any of this position statement’s contents or its exhibits to any other person without the Company’s prior written consent. In addition, the Company reserves the right to supplement or amend this position statement as necessary.

Morgan, Lewis & Bockius LLP

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I. FACTUAL BACKGROUND

A. The Company.

Merrill Lynch is a multinational banking and financial services corporation that provides, *inter alia*, wealth management services to customers through a network of client-facing Financial Advisors (“FAs”) in branch offices across the United States. Branch offices are comprised of a team of FAs who are dedicated to providing financial planning, retirement planning, and investment advice and other non-banking services to customers and prospective customers.

B. (b) (6), (b) (7)(C) Employment.

(b) (6), (b) (7)(C) began working at Merrill Lynch on (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C). Most recently, at all relevant times until (b) (6), (b) (7)(C) termination of employment on (b) (6), (b) (7)(C) 2019³, (b) (6), (b) (7)(C) held the title of (b) (6), (b) (7)(C). In that role, (b) (6), (b) (7)(C) was the (b) (6), (b) (7)(C) for the Company’s branch office in Arizona.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

C. (b) (6), (b) (7)(C) Duties.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

pursuant to FINRA⁵

³ All dates are in 2019 unless otherwise noted.

⁴ (b) (6), (b) (7)(C)

⁵ FINRA is an independent non-profit, self-regulatory organization empowered by the securities and exchange commission to regulate U.S. stockbrokers and brokerage firms. It writes and enforces the rules governing the activities of the securities industry, checks for compliance with these rules, and educates investors. All brokers must be licensed by FINRA.

regulations, (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

Consistent with FINRA regulation, the Company maintains a “Supervision Policy” which defines a “supervisor” as follows:

A Supervisor is a qualified employee (by virtue of licenses (if relevant), experience, and demonstrated ability) whom senior management has given the authority and responsibility for a business unit, and pursuant to such authority and responsibility: (a) exercises control over the activities of employees assigned to the business unit; and (b) carries out supervisory actions relating to the business units that are part of the supervisory system established by the Firm that is reasonably designed to detect and prevent a violation of relevant laws, rules, regulations, and Company policies and procedures by the assigned employees. *A Supervisor possesses the authority, acting alone or in consultation with other Supervisors, to affect the behavior of employees he or she supervises including the authority to hire, fire, reward and discipline.*

Exhibit 4 at p. 2 (emphasis added).


The Supervision Policy further states that employees assigned supervisory authority (such as (b) (6), (b) (7)(C)) must:

- Have ultimate responsibility for implementing the supervisory requirements for each business unit;
- Possess the knowledge and experience necessary to supervise the business unit and have the necessary licenses (where applicable); and
- Have the authority to supervise by virtue of the ability to hire, discipline (including terminate), and influence compensation related to the employees reporting directly or indirectly to them.

Id.

In addition, the Company maintains a (b) (6), (b) (7)(C), which applied to the Charging Party as (b) (6), (b) (7)(C) for the (b) (6), (b) (7)(C) branch office. That policy describes the authority and responsibilities of the (b) (6), (b) (7)(C) as follows:

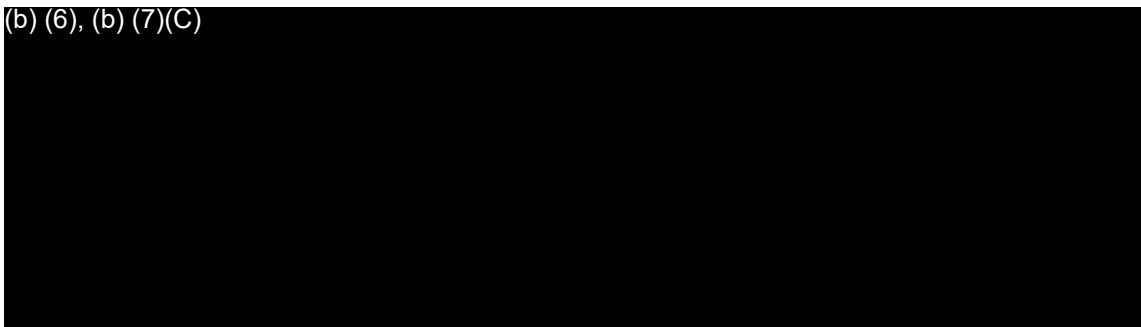
(b) (6), (b) (7)(C)



See **Exhibit 5**, at p. 6.

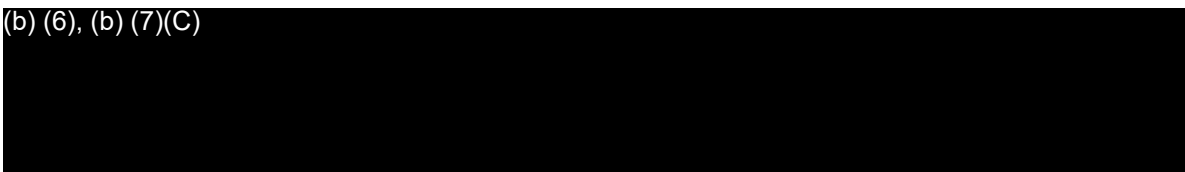
The job description for (b) (6), (b) (7)(C) reflects the following supervisory responsibilities:

(b) (6), (b) (7)(C)



See, **Exhibit 6**.

(b) (6), (b) (7)(C)



II. DISCUSSION

A. The Legal Standard for Section 2(11) Supervisors.

Section 2(11) of the Act defines “supervisor” as follows:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11).

As the Region is aware, the Board interprets the foregoing list of twelve supervisory functions in the disjunctive. Therefore, an individual who has the authority to exercise any one of these functions in the interest of the employer is a supervisor, if the exercise of that supervisory function involves the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1334 (2000).

Moreover, Section 2(11) of the Act “does not require the exercise of the power described for all or any definite part of the employee’s time. It is the existence of the power which determines the classification.” *In re The Pearson Bros Co.*, 199 NLRB 1179, 1181 (1972) (citing *Ohio Power Co., v. NLRB*, 176 F.2d 385, 388 (6th Cir. 1949).

It is also not necessary for supervisors to possess the ultimate authority to make these decisions; all that is needed is the authority to make an “effective recommendation.” *See Mountaineer Park, Inc.*, 343 NLRB 1473, 1474-76 (2004) (“Significantly, it is not required that the individual have exercised any of the powers enumerated in the statute; rather, it is the existence of the power that determines whether the individual is a supervisor.” *Pepsi-Cola Co.*, 327 NLRB 1062, 1064 (1999) (rejecting Regional Director’s distinction between those individuals that had exercised supervisory authority and those that had not yet done so).⁶

In prior cases in the banking industry, the Board has recognized that branch managers are Section 2(11) supervisors. *See, e.g., Bank of America National Trust & Savings Association*, 196 NLRB No. 591, 593 (1972). (Board noted that banking branch manager is a supervisor because, *inter alia*, he “enjoys substantial autonomy in his direction, retention, and promotion of branch employees” and because “his job performance is directly responsible in determining the success of the branch’s operations”); *In re American Commercial Bank*, 226 NLRB 1130 (1976) (employee serving in acting capacity of bank branch manager for a month found to be a Section 2(11) supervisor where he was paid more than non-managerial employees, attended monthly meetings concerning business development, and performed other work related to the opening of a new bank branch); *In re Wells Fargo Bank*, 179 NLRB 465 (1969) (Board found that an office of bank branch employees constitutes a separate identifiable unit in part because they have common direct supervision under a branch manager).

⁶ Recently, in *Bloomsburg Care and Rehabilitation Center*, 06-RC-241173 (Dec. 3, 2019), the Board has expressed a willingness to expand what constitutes a putative supervisor’s ability to “effectively recommend” action, at least with respect to discipline, in citing to *NLRB v. New Vista Nursing and Rehabilitation*, 719 F.3d 203 (3d Cir. 2013) (holding that even when a recommended action is taken after an independent investigation by superiors, an employee will still “effectively recommend” discipline, and thus be a supervisor, if they (1) verbally counsel employees, (2) these actions start a disciplinary process, and (3) the actions make future punishment more severe).

B. The Charging Party Was a Section 2(11) Supervisor.

The Charging Party possessed the authority to exercise many of the supervisory functions under Section 2(11) of the Act. The following is not an exhaustive discussion of every element of supervisory authority, but it is more than sufficient to demonstrate Section 2(11) status since only one of the statutory functions is needed to demonstrate supervisory status. *See, Harborside Healthcare, Inc.*, 330 NLRB at 1334.

1. Hiring.

As (b) (6), (b) (7)(C) possessed and exercised authority to recruit, interview and hire candidates to work at (b) (6), branch, or, at a minimum, make effective recommendations as to those hiring decisions. (b) (6), (b) (7)(C) are required to “identif[y], attract, recruit, and hire diverse talent from varied backgrounds and cultures to the organization” and provide employees “timely, constructive feedback and guidance on performance.” *See, Exhibit 8* (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

2. Discipline/Suspend/Discharge.

The statutory definition of supervisor includes those individuals vested with the authority to “discipline” other employees. 29 U.S.C. § 152(11). The fact that the individual does not possess final authority to discipline an employee is not determinative of supervisory

⁷ AGP is a Company program focused on hiring competitive recruits with a shorter industry length of service (less than 10 years).

⁸ Practice Management Development (“PMD”) is the former name of the FADP training program.

status. Instead, “the relevant consideration is effective recommendation or control rather than final authority.” *NLRB v. Yeshiva University*, 444 U.S. 672, 684 (1980).

(b) (6), (b) (7)(C), including (b) (6), (b) (7)(C) have authority to discipline subordinate employees for misconduct and are expected to do so in their capacity as the (b) (6), (b) (7)(C). Typically, prior to the issuing discipline, (b) (6), (b) (7)(C) will consult with Human Resources for guidance on the appropriate course of action. The (b) (6), (b) (7)(C) may also consult with their (b) (6), (b) (7)(C) for additional input on a particular disciplinary decision. But it is the (b) (6), (b) (7)(C) as the (b) (6), (b) (7)(C) who is responsible for issuing discipline to employees (b) (6), (b) (7)(C). As noted above, this authority and responsibility is clearly stated in the Supervision Policy, which applied to the Charging Party as (b) (6), (b) (7)(C):

A Supervisor possesses the authority, acting alone or in consultation with other Supervisors, to affect the behavior of employees he or she supervises including the authority to hire, fire, reward and discipline.

Exhibit 4 at p. 2. *See also id.* (stating that Supervisors “[h]ave the authority to supervise by virtue of the ability to hire, discipline (including terminate), and influence compensation related to the employees reporting directly or indirectly to them”).

(b) (6), (b) (7)(C) did, in fact, exercise (b) (6), (b) (7)(C) authority to discipline other employees, as evidenced by the following examples:

- Confirmation of a verbal warning issued by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2018. *See, Exhibit 12.*
- Confirmation of a verbal warning issued by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2019. *See, Exhibit 13.*

3. Responsibly Direct.


The authority to responsibly direct employees exists when an employee decides what job will be undertaken next or who will do the job, provided the direction is both “responsible” and carried out with independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 691 (2006). The Board holds that for direction to be “responsible,” the person performing the oversight must be accountable for the performance of the task, such that some adverse consequence may befall one providing the oversight if the tasks performed are not performed properly. *Id.* at 692.

In *Oakwood Healthcare*, the Board stated that if an individual has employees under him and if that individual decides what job shall be undertaken next or who shall do it, that individual is a supervisor, provided that the direction is both responsible and carried out

with independent judgment. Thus, direction is only supervisory if it is performed responsibly. *Id.* at 691. Moreover, responsible direction requires a finding that the person directing the performance of a task is held accountable for the task's performance. *Id.* at 692.

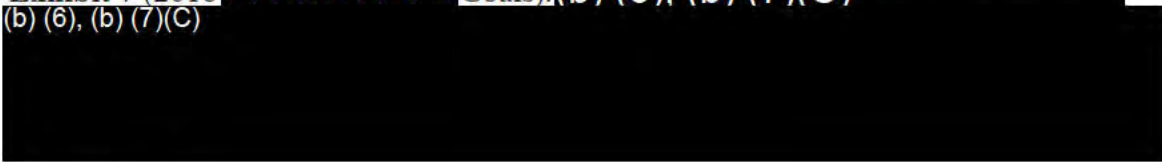
The Board has held that to establish accountability for purposes of responsible direction, it must be shown not only that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary, but that there is also a prospect of adverse consequences for the putative supervisor if he or she does not take these steps. *Id.*; see also *Golden Crest Healthcare Cir.*, 348 NLRB 727, 731 (2006) (noting that although the employer established that charge nurses have the authority to direct CNAs, the employer failed to show responsible direction because there was no evidence that a charge nurse had experienced any “material consequences to her terms and conditions of employment, either positive or negative, as a result of her performance in directing CNAs”); *Brusco Tug & Barge, Inc.*, 359 NLRB 486, 492 (2012).

(b) (6), (b) (7)(C)

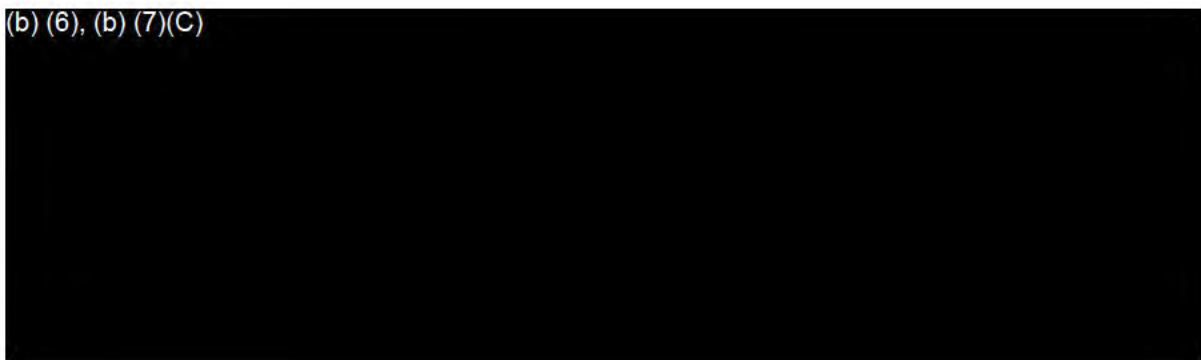


The Company uses metrics such as client acquisition/retention rates, revenue growth, and integration (*i.e.*, number of referrals and participation rates, trust sales, and lending activity) to measure the financial performance (b) (6), (b) (7)(C) and, in turn, (b) (6), (b) (7)(C) are measured not only in terms of quantitative metrics, but also in terms of the quality of the leadership that they provide to their employees. See, Exhibit 7 (2018) (b) (6), (b) (7)(C) Goals. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

4. Secondary Indicia.

(b) (6), (b) (7)(C)

Furthermore, as (b) (6), (b) (7)(C) was licensed by FINRA to supervise securities professionals, and (b) (6), (b) (7)(C) held the title of (b) (6), (b) (7)(C) as well as (b) (6), (b) (7)(C) was nominated by (b) (6), (b) (7)(C) associates and recognized by (b) (6), (b) (7)(C) for being one of the (b) (6), (b) (7)(C) in 2017. See, **Exhibit 10** at p. 2. This shows that (b) (6), (b) (7)(C) was regarded to be a supervisor, and (b) (6), (b) (7)(C) subordinate employees had a reasonable basis for regarding (b) (6), (b) (7)(C) as such. See, e.g., *Bama Co.*, 145 NLRB 1141, 1143, (1964) (holding that the fact that employees looked at the individual in question as being a supervisor and that there was a “valid basis for such judgment on their part” supported the conclusion that the individual was a supervisor).

C. Because the Charging Party Was a Supervisor, (b) (6), (b) (7)(C) Was Not Entitled to the Protection of the Act.

Section 8(a)(1) of the Act prohibits certain employer conduct that adversely affects “employees.” Section 2(3), however, excludes supervisors from the definition of “employees.” Furthermore, under Section 14(a), “no employer subject to [the Act] shall be compelled to deem individuals defined [under the Act] as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.”

Nicholas Gordon
February 7, 2020
Page 10

Under the Board's holdings, the “discharge of supervisors as a result of their participation in union or concerted activity — either by themselves or when allied with rank-and-file employees — is not unlawful for the simple reason that employees, but not supervisors, have rights protected by the Act.” *Deaton Truck Lines, Inc.*, 143 NLRB 1372, 1378 (1963).

III. CONCLUSION

Because the Charging Party was a Section 2(11) supervisor, the instant charges should be dismissed, absent withdrawal. Please let us know if you have any questions or if the Regional Director needs any additional information in order to make a determination on the issue of supervisory status.

Sincerely,

/s/ J. Carlos Gonzalez
J. Carlos Gonzalez

c: Jonathan C. Fritts

EXHIBIT 3

BrokerCheck Report

(b) (6), (b) (7)(C)

CRD# (b) (6), (b) (7)(C)

<u>Section Title</u>	<u>Page(s)</u>
Report Summary	1
Broker Qualifications	2 - 3
Registration and Employment History	4
Disclosure Events	5

About BrokerCheck®

BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

What is included in a BrokerCheck report?

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

Where did this information come from?

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- o information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- o information that regulators report regarding disciplinary actions or allegations against firms or brokers.

How current is this information?

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

What if I want to check the background of an investment adviser firm or investment adviser representative?

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <https://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414>.

Are there other resources I can use to check the background of investment professionals?

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at brokercheck.finra.org



For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources. For more information about FINRA, visit www.finra.org.

Thank you for using FINRA BrokerCheck.

(b) (6), (b) (7)(C)

CRD# (b) (6), (b) (7)(C)

This broker is not currently registered.

Report Summary for this Broker

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

Broker Qualifications

This broker is not currently registered.

This broker has passed:

- 2 Principal/Supervisory Exams
- 3 General Industry/Product Exams
- 1 State Securities Law Exam

Registration History

This broker was previously registered with the following securities firm(s):

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

CRD# (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) AZ
(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 9



Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? **Yes**

The following types of disclosures have been reported:

Type	Count
Termination	1

Investment Adviser Representative Information

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative, visit the SEC's Investment Adviser Public Disclosure website at

<https://www.adviserinfo.sec.gov>

Broker Qualifications



Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered.



Broker Qualifications

Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 2 principal/supervisory exams, 3 general industry/product exams, and 1 state securities law exam.

Principal/Supervisory Exams

Exam	Category	Date
General Securities Sales Supervisor - Options Module Examination	Series 9	(b) (6), (b) (7)(C) 2010
General Securities Sales Supervisor - General Module Examination	Series 10	(b) (6), (b) (7)(C) 2010

General Industry/Product Exams

Exam	Category	Date
Securities Industry Essentials Examination	SIE	(b) (6), (b) (7)(C) /2018
Futures Managed Funds Examination	Series 31	(b) (6), (b) (7)(C) 2011
General Securities Representative Examination	Series 7	(b) (6), (b) (7)(C) 2003

State Securities Law Exams

Exam	Category	Date
Uniform Combined State Law Examination	Series 66	(b) (6), (b) (7)(C) 2003

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.



Registration and Employment History

Registration History

The broker previously was registered with the following firms:

Registration Dates	Firm Name	CRD#	Branch Location
(b) (6), (b) (7)(C) - (b) (6), (b) (7)(C) / 2019	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	7691	PEORIA, AZ

Employment History

This section provides up to 10 years of an individual broker's employment history as reported by the individual broker on the most recently filed Form U4.

Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
(b) (6), (b) (7)(C) - Present	Optima Capital Management	SCOTTSDALE, AZ
(b) (6), (b) (7)(C) - (b) (6) / 2019	Merrill Lynch	Peoria, AZ

Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

No information reported.

Disclosure Events



What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
 - o A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
 - o A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.
3. **Disclosure events in BrokerCheck reports come from different sources:**
 - o As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
 - o A disclosure event may have a status of *pending*, *on appeal*, or *final*.
 - § A "pending" event involves allegations that have not been proven or formally adjudicated.
 - § An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - § A "final" event has been concluded and its resolution is not subject to change.
 - o A final event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
 - § An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - § A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - § A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

	Pending	Final	On Appeal
Termination	N/A	1	N/A





Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Employment Separation After Allegations

This type of disclosure event involves a situation where the broker voluntarily resigned, was discharged, or was permitted to resign after being accused of (1) violating investment-related statutes, regulations, rules or industry standards of conduct; (2) fraud or the wrongful taking of property; or (3) failure to supervise in connection with investment-related statutes, regulations, rules, or industry standards of conduct.

Disclosure 1 of 1

Reporting Source:	Firm
Employer Name:	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Termination Type:	Discharged
Termination Date:	(b) (6), (b) (7) / 2019
Allegations:	Conduct including solicitation of prospects inconsistent with Firm standards, and failure to fully cooperate during the course of the Firm's review.
Product Type:	No Product

End of Report



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EXHIBIT 9

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Manager: (b) (6), (b) (7)(C)

Evaluated By: (b) (6), (b) (7)(C)

2018 Year-End Review

Organization: (b) (6), (b) (7)(C) Team

Location: US - AZ - (b) (6), (b) (7)(C)

01/01/2018 - 12/31/2018

Review

Manager Overall Evaluation

Rating: Meets / Meets

Comment: (b) (6), (b) (7)(C) made progress in 2018 with household acquisition and ended above plan in that category. There was a large outflow that impacted net new money. (b) (6), (b) (7)(C) and I have discussed diversifying the client base in (b) (6), (b) (7)(C) - with a very elderly client base, RMDs and client deaths are a drag on assets every year. (b) (6), (b) (7)(C) has talked about prospecting corporations, executives, small business owners, COIs, etc and doing events in (b) (6), (b) (7)(C) rather than in (b) (6), (b) (7)(C) to attract individuals in accumulation, rather than decumulation. (b) (6), (b) (7)(C) lagged in new checking and savings accounts, trust sales, and lending introductions, and these are key areas of focus for 2019. (b) (6), (b) (7)(C) has a plan to hit (b) (6), (b) (7)(C) goals in these areas. (b) (6), (b) (7)(C) has been a partner for me in (b) (6), (b) (7)(C) hiring and I would like (b) (6), (b) (7)(C) to be even more involved with the (b) (6), (b) (7)(C) office - weekly tracking and accountability - how many contacts, how many webexes or meetings, pipeline reviews, and so forth. The goals for 2019 are very robust and (b) (6), (b) (7)(C) will need to execute on (b) (6), (b) (7)(C) plan early, to get traction throughout the year.

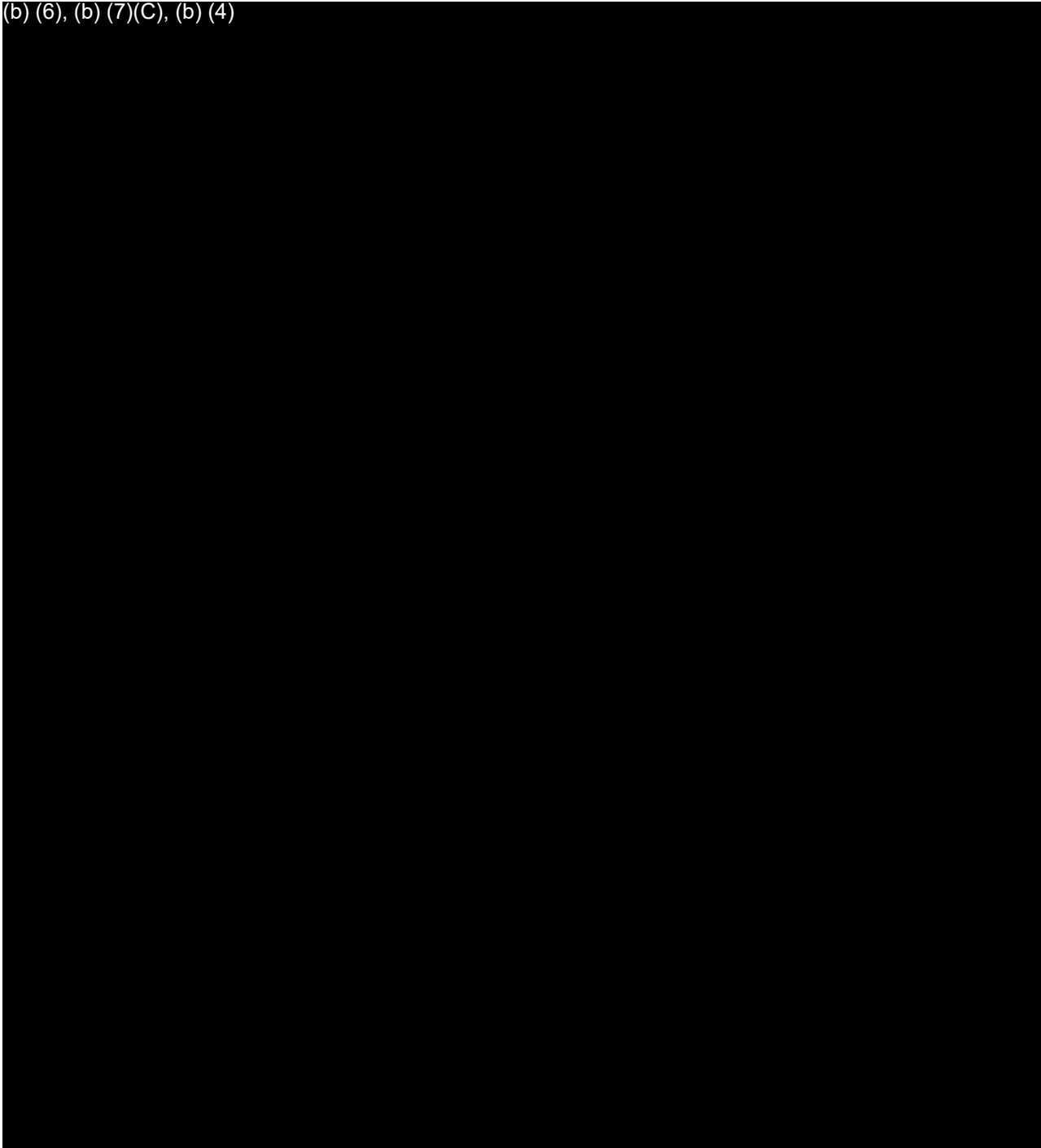
Employee Overall Evaluation

Rating: Meets / Meets

Comment: My Year-End assessment is based on the following categories – Client Acquisition, Growth & Flows, Integration, and People.

(b) (6), (b) (7)(C), (b) (4)

(b) (6), (b) (7)(C), (b) (4)



Acknowledgement

Employee

Entered by:

(b) (6), (b) (7)(C)

Date:

01/30/2019

Status:

Acknowledge Review

Comment:

Goals

Employees – Click [My Goals](#) to view or update your current list of goals.

Managers – Click [My Team's Goal Detail](#) to view a summary of goals for your entire team.

Note: Goal details will appear in a new window.

EXHIBIT 10

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Manager: (b) (6), (b) (7)(C)

Evaluated by: (b) (6), (b) (7)(C)

2017 Year-End Review

Organization: (b) (6), (b) (7)(C) Team

Location: US - AZ - (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (inactive)

01/01/2017 - 12/31/2017

Review

Rating: Meets / Meets

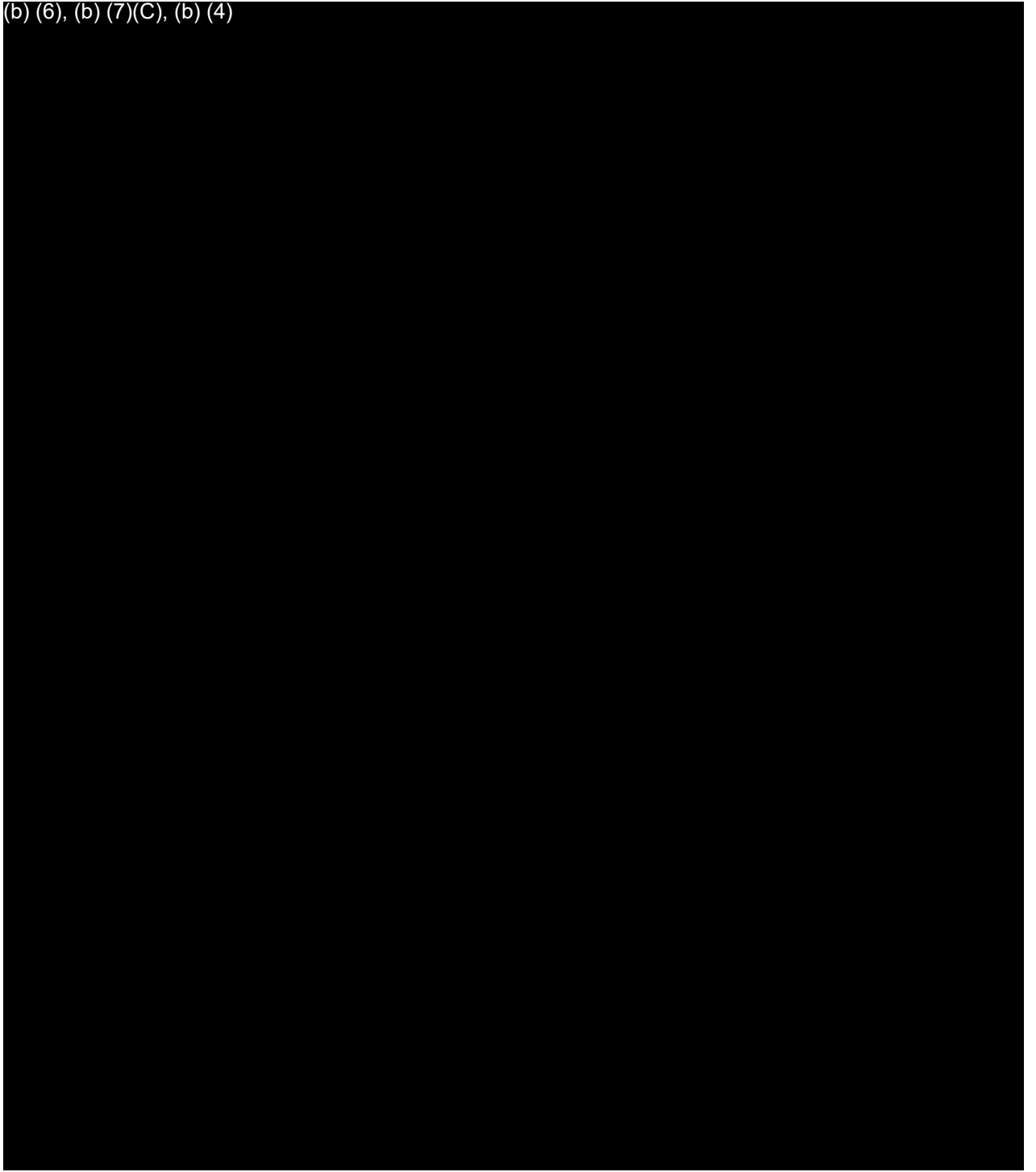
Comment: (b) (6), (b) (7)(C) had mixed results in 2017. (b) (6), (b) (7)(C) and referral numbers were above plan, and that was the result of his follow-up and team on team reinforcement. Revenue as of year end was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (4) (b) (6), (b) (7)(C), (b) (4) (b) (6), (b) (7)(C) and I have had a number of discussions around diversifying the client base in (b) (6), (b) (7)(C) away from clients in decumulation to clients in the accumulation or transition phase. The heavy percentage of retirees has led to yearly outflows and declining revenue, as growth has not kept pace with RMDs and deaths. Gross households were a major focus for us in 2017 and (b) (6), (b) (7)(C) finished at (b) (6), (b) (7)(C), (b) (4) (b) (6), (b) (7)(C) and I have discussed making this a top priority in 2018 with events, training, and marketing support. (b) (6), (b) (7)(C) has helped a great deal with the PMD interview process. (b) (6) is a resource for technology training and helped (b) (6), (b) (7)(C) in 2017. In addition (b) (6) is on top of audit prep and requirements. I would like to see (b) (6), (b) (7)(C) results in 2018 in a top quintile, which would require (b) (6), (b) (7)(C) to lead by example in new households, flows, banking and referrals. In addition, it will require regular accountability with (b) (6), (b) (7)(C) for their growth hurdles.

Rating: Meets / Meets

Comment: My year-end assessment is based on the following categories – Client Experience Standard, Responsible Advisor Growth & Development, Responsible Growth & Collaboration, and Business Results.

(b) (6), (b) (7)(C), (b) (4)

(b) (6), (b) (7)(C), (b) (4)



Acknowledgement

Employee

Entered by: Jonathan Elliott
Status: Acknowledge Review
Comment:

Date: 01/30/2018

Goals

2017: Diversity & Inclusion (Enterprise goal)

Take personal ownership for realizing the power of people through inclusion; improve workforce diversity and create an

inclusive workplace where every employee feels respected and valued.

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017: Drives Operational Excellence (Enterprise goal)

Consistently strives to achieve responsible growth. Is intellectually curious and willing to speak up and challenge the status quo in a positive way; does so with the intent of improving the existing operating environment, increasing efficiency, and mitigating operational risk. Displays a bias for action and a commitment to sustainable results. Identifies and resolves issues proactively, understands and manages key operational and compliance risks, embeds risk management into daily activities, and ensures an effective control environment.

Due Date: 12/31/2017

Status:

Category: Behaviors (The How)

2017: Make Bank of America a Great Place to Work (Enterprise goal)

Help make BAC a great place to work by demonstrating commitment to our purpose, values and responsible growth strategy.

- Model behaviors which value each individual for their unique contribution and create an environment that allows each employee to reach their potential
- Demonstrate commitment to the Bank of America values and promote a better company for our employees
- Exhibit conduct supportive of the long-term interests of the Company

Due Date: 12/31/2017

Status:

Category: Behaviors (The How)

2017: Manage Risk (Enterprise goal)

Take personal ownership for managing risk well and be proactive in identifying and controlling risks, issues and concerns.

- Act in accordance with the letter and spirit of all applicable laws, rules and regulations, the company's code of conduct, risk framework, risk appetite statement and other relevant policies, standards, procedures and guidance.
- Understand all risks inherent in your business or function, including its end-to-end operations.
- Actively participate in and contribute to your business' or function's risk routines, including risk identification.
- Challenge one another to think objectively and make risk-informed decisions.
- Identify and escalate issues and concerns promptly; resolve issues in a timely manner.
- Speak up and discuss concerns and encourage others to do so. Recognize those who bring attention to potential risks.

As applicable:

- Actively engage and effectively partner with control functions.
- Meet any business/job specific risk management expectations and/or expectations relating to relevant MRAs/Audit issues.

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 Framework for Growth WHAT Goal 1 - Responsible Growth: Client Acquisition/ CIO

(b) (4) (enter goal)

(b) (4) (enter goal)

•Net New Strategic Flows: (enter goal)

•Revenue: (enter goal)

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 Framework for Growth WHAT Goal 2 - Collaborating for Success: Trust/ Lending

•# of Referrals & Participation Rates: (enter goal)

•New Trust Sales: (enter goal)

•Net New Liabilities: (enter goal)

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 Framework for Growth WHAT Goal 3 - Census Growth

•FA Census Growth: (enter goal)

•PMD Census Growth: (enter goal)

•Diversity & Inclusion:

a. Market must maintain the best ball (35%) or increase % Female PMD (enter your market YE metric here) to achieve the goal

b. Market must maintain the best ball (35%) or increase % POC PMD (enter your market YE metric here) to achieve the goal

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 Framework for Growth WHAT Goal 4 - Client Experience Standard

•Client Experience Standard: (enter goals)

1. Qualified Team

2. Strong Client Profile

3. Discipline Investment Process (IAP & DIP)

4. Annual Reviews

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 Framework for Growth WHAT GOAL 5 - Operational Excellence

•Discretionary Expenses & Audit: (enter goals)

Due Date: 12/31/2017

Status:

Category: Business Results (The What)

2017 MLWM (b) (6), (b) (7)(C) Competency Model

Leverage the MLWM (b) (6), (b) (7)(C) Competency Model for your 'HOW' Goals.

Choose 2 to 3 competencies to personally focus on in 2017. Refer to the full (b) (6), (b) (7)(C) competency model for definitions and detailed behaviors.

- (b) (6), (b) (7)(C), (b) (4)

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Due Date: 12/31/2017

Status:

Category: Behaviors (The How)

2017 (b) (6), (b) (7)(C) HOW Goal: Lead by Example in My Practice and Amongst Peers

For example:

(b) (6), (b) (7)(C), (b) (4)

Due Date: 12/31/2017

Status:

Category: Behaviors (The How)

EXHIBIT 11

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Manager: (b) (6), (b) (7)(C)

Evaluated By: (b) (6), (b) (7)(C)

2016 Year-End Review

Organization: (b) (6), (b) (7)(C) Team

Location: US - AZ

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (inactive)

01/01/2016 - 12/31/2016

Review

Manager Overall Evaluation

Rating: Meets / Meets

Comment: (b) (6), (b) (7)(C) took ownership of (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) office this year and drove results with regular reporting, coaching and follow up. (b) (6), (b) (7)(C) achieved (b) (6), (b) (7)(C) and has worked to drive designations among (b) (6), (b) (7)(C) teams.

(b) (6), (b) (7)(C) has done a great job in (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). I often receive very positive unsolicited feedback about how knowledgeable, informative and patient (b) (6), (b) (7)(C) is in (b) (6), (b) (7)(C) discussions.

(b) (6), (b) (7)(C), (b) (4)

(b) (6), (b) (7)(C), (b) (4) (b) (6), (b) (7)(C) has been working on (b) (6), (b) (7)(C) leadership, communication and presence, as these areas are critical for (b) (6), (b) (7)(C) long term development. I look forward to partnering with (b) (6), (b) (7)(C) in 2017 to improve the results in (b) (6), (b) (7)(C) and contribute to the Market overall.

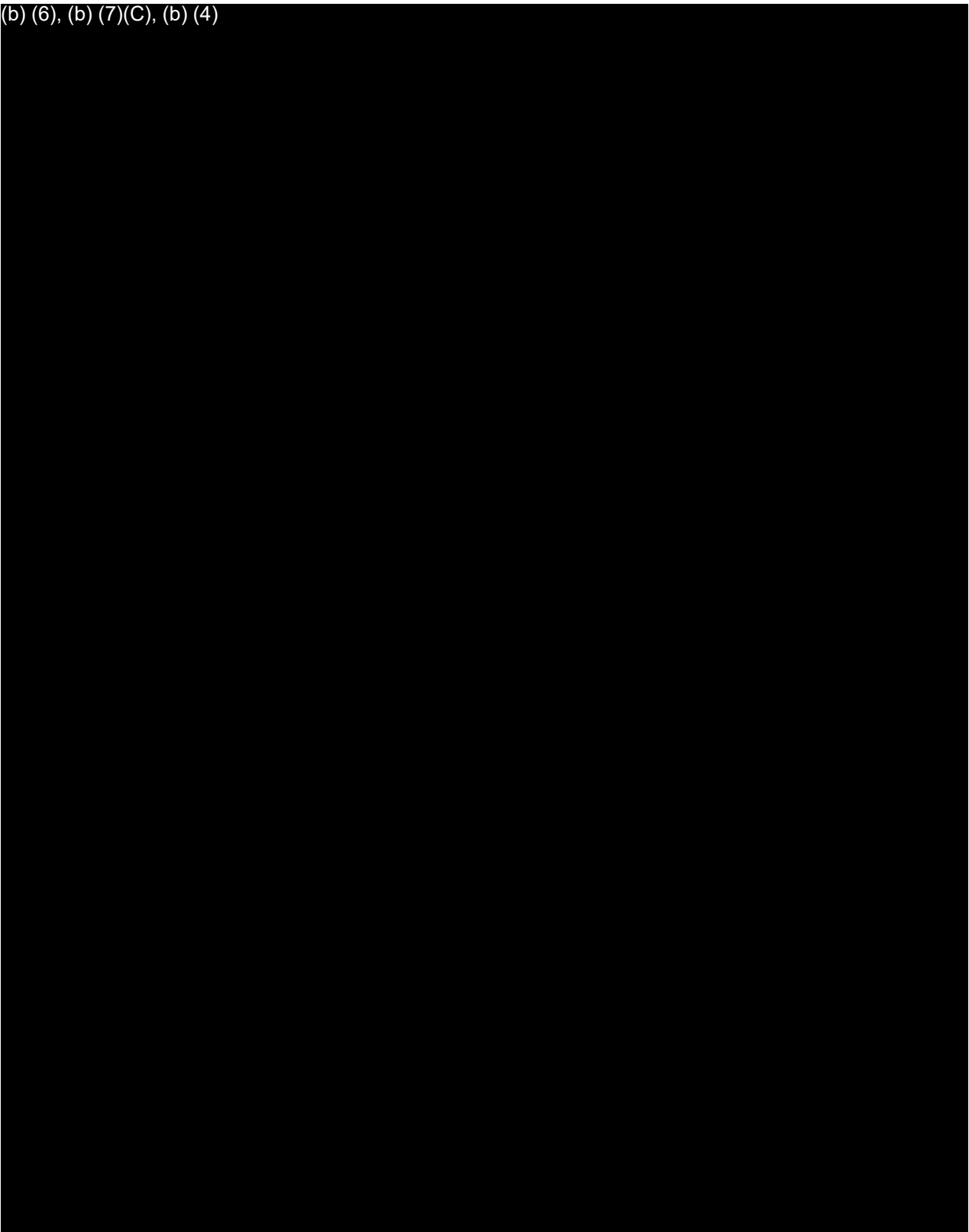
Employee Overall Evaluation

Rating: Meets / Meets

Comment: My year-end assessment is based on the following categories – CES Adoption, Advisor Growth, Collaboration, and Business Results.

(b) (6), (b) (7)(C), (b) (4)

(b) (6), (b) (7)(C), (b) (4)



Acknowledgement

Manager

Entered by: Date:

Status:

Comment:

Employee

Entered by: (b) (6), (b) (7)(C)
Status: Acknowledge Review
Comment:

Date: 01/25/2017

Goals

(MLWM Diversity Goal 1)

Demonstrates a commitment to Diversity & Inclusion

Demonstrate a commitment to Diversity and Inclusion (D&I), and model behaviors which value each individual for their unique contribution and create an environment that allows each employee to reach their potential

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

(MLWM Diversity Goal 2)

Improve the diversity in my team by hiring, developing and retaining diverse talent

Improve the diversity in my team by hiring, developing and retaining diverse talent, for example: hold a quarterly session and meet with female/poc talent in my line of business

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

(MLWM Diversity Goal 3) Actively contribute to fostering an inclusive environment that stimulates quality dialogue and values differences of opinion leveraging my field champion as my market resource

Actively contribute to fostering an inclusive environment that stimulates quality dialogue and values differences of opinion, for example: serve on a diverse focused committee

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

1. Leading Universal Adoption (KPIs)

Client Experience Standard: (Substantial improvement over 2015 CES results)

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

2. Responsible Growth / Collaborating for Success (KPIs)

(b) (6), (b) (7)(C), (b) (4)

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

3. Operational Excellence (KPIs)

Discretionary Expense: (b) (6), (b) (7)(C), (b) (4)

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

4. Results (KPIs)

Net New Strategic Flows (b) (6), (b) (7)(C), (b) (4)

Revenue: (b) (6), (b) (7)(C)

Direct Contribution: (b) (6), (b) (7)(C)

Due Date: 12/31/2016

Status: Completed

Category: Business Results (The What)

Drives Operational Excellence

Consistently strives to achieve the best possible outcome. Is intellectually curious and demonstrates a desire to go beyond minimum requirements by challenging the status quo in a positive way with the intent of improving existing practices and increasing efficiency. Displays a bias for action and a commitment to sustainable results.

Due Date: 12/31/2016

Status: Completed

Category: Behaviors (The How)

H. Coaches Others to Succeed and Grow: Provides timely guidance and feedback to help others build knowledge and skill areas needed for current or future job responsibilities

- Provides timely, constructive feedback and guidance on performance
- Implements a process for coaching; has regular coaching and development discussions
- Uncovers individual motivations and adjusts coaching style to optimize results
- Identifies and encourages potential leadership talent; supports professional development for all associates
- Helps others improve job performance by providing instruction, demonstrating desired work behaviors, and encouraging questions
- Meets with teams to discuss OPM, the benefits of teaming and leveraging PMD, BFA and TFA programs to fulfill key roles/ functions on the team

Due Date: 12/31/2016

Status: Completed

Category: Behaviors (The How)

I. Communicates Effectively: Clearly conveys information and ideas to others

- Has process for keeping others informed
- Listens actively; correctly interprets messages from others
- Conveys clear and logical messages through both written communication and formal/informal verbal presentations
- Communicates with candor and transparency; adjusts style and personalizes messages in order to best connect with others

Due Date: 12/31/2016

Status: Completed

Category: Behaviors (The How)

J. Leads with Courage and Conviction: Speaks and acts with confidence

- Demonstrates balance between enterprise mindset and FA mindset
- Acts as a role model in early adoption of initiatives into his/her practice; embodies the Client Experience Standard
- Displays persistence and tenacity to do what is right
- Takes decisive actions and follows through on business and personnel decisions
- Effectively addresses and leads through conflict; diffuses potentially volatile situations
- Is willing to ask for help

Due Date: 12/31/2016

Status: Completed

Category: Behaviors (The How)

Make Bank of America a Great Place to Work

Helps make BAC a great place to work through a commitment to diversity, inclusion and our company values

- Model behaviors which value each individual for their unique contribution and create an environment that allows each employee to reach their potential.
- Demonstrate commitment to the Bank of America values and promoting a better company for our employees.

Due Date: 12/31/2016

Status: Completed

Category: Behaviors (The How)

EXHIBIT 12

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, (b) (6), (b) (7)(C) 2018 1:48 PM
To: (b) (6), (b) (7)(C)
Subject: FW: Verbal Warning Confirmation

(b) (6), (b) (7)(C) - FYI. Thanks (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, (b) (6), (b) (7)(C) 2018 1:48 PM
To: (b) (6), (b) (7)(C) @ml.com>
Subject: Verbal Warning Confirmation

(b) (6), (b) (7)(C)

This email serves as confirmation of the Verbal Warning that I gave you today (b) (6), (b) (7)(C) 2018. As we discussed, you are and have been DNM to your hurdles for the entirety of the program. We need to see immediate and sustained improvement in your results.

If I can help in any way please let me know.

Thanks,

(b) (6), (b) (7)(C)

Merrill Lynch, Pierce, Fenner & Smith Inc.

(b) (6), (b) (7)(C)

Direct (b) (6), (b) (7)(C)
Toll Free (b) (6), (b) (7)(C)
Fax 866-216-9340
(b) (6), (b) (7)(C) @ml.com

(b) (6), (b) (7)(C)

EXHIBIT 13

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Tuesday, (b) (6), (b) (7)(C) 2019 3:06 PM
To: (b) (6), (b) (7)(C)
Subject: FW: Performance Hurdles

(b) (6), (b) (7)(C) - I talked to (b) (6), (b) (7)(C) this afternoon and acknowledged delivering the verbal warning. Thanks (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Merrill Lynch Wealth Management
Merrill Lynch, Pierce, Fenner & Smith Inc.

(b) (6), (b) (7)(C)

Direct (b) (6), (b) (7)(C)
Toll Free (b) (6), (b) (7)(C)
Fax 866-216-9340
(b) (6), (b) (7)(C)@ml.com

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Tuesday, (b) (6), (b) (7)(C) 2019 2:27 PM
To: (b) (6), (b) (7)(C)@ml.com>
Subject: Performance Hurdles

(b) (6), (b) (7)(C) - As discussed please see your hurdle information below. Thanks (b) (6), (b) (7)(C)

Details:

Name: (b) (6), (b) (7)(C)
Role: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
LOS Month: 3
% to PC Hurdle: (b) (6), (b) (7)(C)
% to Net New Money Hurdle: (b) (6), (b) (7)(C)
% to Gross New Household Hurdle: (b) (6), (b) (7)(C)

Performance Management Policy

All (b) (6), (b) (7)(C) are subject to the (b) (6), (b) (7) Performance Management Policy which states at the conclusion of LOS month 3 (close of the production month), any (b) (6), (b) (7) not meeting the minimum performance hurdles (off-target) will be coached via the following progressive performance management:

- LOS month 3: verbal warning conversation with direct manager
- LOS month 6: if (b) (6), (b) (7) remains off-target, direct manager will issue final written warning (FWW)
- LOS month 9: if (b) (6), (b) (7) remains off-target, direct manager will move to termination

Note: At LOS month 9, if the (b) (6), (b) (7) is at/above 80% of being on-target (i.e. at/above 80% for 2 of 3 metrics), an automatic 3-month extension will occur.

- At the end of the 3-month extension, if the (b) (6), (b) (7) is not 100% on-target (i.e. 100% for 2 of 3 metrics), the (b) (6), (b) (7) will terminate the (b) (6), (b) (7)(C)
- There is not another opportunity for an extension for being within 80%.

If the (b) (6), (b) (7)(C) is on-target (MR) at LOS month 3, the program will take another performance snapshot at LOS month 6 and will continue take snapshots every 3 months (LOS months 9, 12, 15, etc.) through the end of the program. If the (b) (6), (b) (7)(C) is off-target (DNM) for the first time, the same progressive performance management process will begin.

Note: Satisfactory performance is a condition of continued participation in the (b) (6), (b) (7)(C) role. Failure to pass the necessary licensing exams within the prescribed timeframe or to meet monthly performance hurdles or other program requirements may result in termination from the program. The (b) (6), (b) (7)(C) participation in the program and/or Merrill Lynch's right to discontinue participation in the program based on performance reasons shall in no way alter the at-will nature of the employment relationship, which is subject to termination by the (b) (6), (b) (7)(C) or Merrill Lynch at any time for any or no reason.

(b) (6), (b) (7)(C)

Merrill Lynch Wealth Management
Merrill Lynch, Pierce, Fenner & Smith Inc.

(b) (6), (b) (7)(C)

Direct (b) (6), (b) (7)(C)

Toll Free (b) (6), (b) (7)(C)

Fax 866-216-9340

(b) (6), (b) (7)(C)@ml.com

(b) (6), (b) (7)(C)

From: [Gordon, Nicholas](#)
To: (b) (6), (b) (7)(C)
Subject: RE: 28-CA-254290 and 28-CA-255012 Bank of America- Regional Determination
Date: Tuesday, February 18, 2020 12:52:00 PM

Thanks (b) (6), (b) (7)(C) I will go ahead and get this processed and the Withdrawal letters should issue shortly.

From: (b) (6), (b) (7)(C)
Sent: Tuesday, February 18, 2020 11:40 AM
To: Gordon, Nicholas <Nicholas.Gordon@nlrb.gov>
Subject: RE: 28-CA-254290 and 28-CA-255012 Bank of America- Regional Determination

Nick – Thanks for your email. I have thought about this carefully. Since I do not have any additional evidence, please go ahead and withdraw my request. I am still checking with AZ state to see what options I have and I will reach out to a couple of employment attorneys to see if it makes sense for the other two individuals to file. I very much appreciate all of your help. (b) (6), (b) (7)(C)

From: Gordon, Nicholas <Nicholas.Gordon@nlrb.gov>
Sent: Tuesday, February 18, 2020 8:41 AM
To: (b) (6), (b) (7)(C)
Subject: RE: 28-CA-254290 and 28-CA-255012 Bank of America- Regional Determination

Hello (b) (6), (b) (7)(C)

I hope that you had a nice holiday weekend. I wanted to follow up with you regarding whether you would like to withdraw the charges or have the Region issue dismissal letters. Please let me know your decision by today so that I can prepare the appropriate withdrawal/dismissal documents.

Thank you,

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website. Instructions for e-filing documents may be found at this [link](#)

Nicholas Gordon
Field Attorney
United States Government
National Labor Relations Board, Region 28-Phoenix
602-416-4756
2600 N Central Ave #1400
Phoenix, AZ 85004

The NLRB requires all parties to file documents electronically through our online E-file system:

Documents: <https://apps.nlr.gov/eservice/efileterm.aspx>
New Charge/Petition:
[https://apps.nlr.gov/eservice/efileterm.aspx?
app=chargeandpetition](https://apps.nlr.gov/eservice/efileterm.aspx?app=chargeandpetition)

From: Gordon, Nicholas

Sent: Thursday, February 13, 2020 4:12 PM

To: (b) (6), (b) (7)(C)

Subject: 28-CA-254290 and 28-CA-255012 Bank of America- Regional Determination

Hello (b) (6), (b) (7)(C)

Thank you for taking the time to speak with me this morning. As we discussed, the Regional Director has made a determination in cases 28-CA-254290 and 28-CA-255012 Bank of America alleging an unlawful discharge and interference with your Section 7 rights. Unfortunately, the Region has determined to dismiss both charges.

As the charges have been determined to be without merit I will need you to let me know whether you wish to withdraw the charges or whether you would like the Region to issue a dismissal letter. If you wish to withdraw the charges, this means that the charges would go away and the Employer would not know the reasons for the Region not proceeding on the charges. However, if you choose to request withdrawal of the charge you will not be able to appeal the Regional Director's determination. Alternatively, you may choose either a long or short form dismissal letter. A short form dismissal letter will briefly describe the reasons for the Region's determination. A long form dismissal will include slightly more detail regarding the reasons for the Region's determination. If you choose either dismissal letter, the Employer will also receive a copy of the letters notifying them that the charge has been dismissed and setting forth the reasons for dismissal. You may choose to take an appeal from the RD's decision with either dismissal letter. Instructions on filing an appeal will be included with the letter.

Please let me know your decision by no later than **Tuesday February 18, 2020 by close of business.** If I have not heard from you by that time, the Region will automatically issue a long form dismissal letter.

If you have any questions please contact me at 602-416-4756.

Please be aware that it is the Region's policy that we do not discuss with the parties the reasons for the Regional Director's decision unless a dismissal letter is issued. If you have any questions regarding the next steps please give me a call to discuss.

Best,

Nicholas Gordon
Field Attorney
United States Government
National Labor Relations Board, Region 31
(310) 307-7339
11500 W. Olympic Blvd., 6th Floor
Los Angeles, CA 90064



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website:
www.nlrb.gov
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February 19, 2020

Jonathan C. Fritts, Attorney at Law
Morgan Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

J. Carlos Gonzalez, Attorney at Law
Morgan Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071

Re: Bank of America Merrill Lynch
Case 28-CA-254290

Dear Gentlemen:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet
Regional Director

cc: Bank of America Merrill Lynch
201 East Washington Street, Suite 1408
Phoenix, AZ 85004

(b) (6), (b) (7)(C)

CAO/NG/dvf



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Washington, DC 20004-2541

J. Carlos Gonzalez, Attorney at Law
Morgan Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071

Re: Bank of America Merrill Lynch
Case 28-CA-255012

Dear Gentlemen:

This is to advise you that I have approved the withdrawal of the charge in the above matter.


Very truly yours,

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet
Regional Director

cc: Bank of America Merrill Lynch
201 East Washington Street, Suite 1408
Phoenix, AZ 85004

(b) (6), (b) (7)(C)

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CAO/NJG/dvf